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WEST ISLES FEASIBILITY STUDY

A STUDY TO ASSESS THE FEASIBILITY OF
ESTABLISHING A NATIONAL MARINE PARK
IN THE WEST ISLES AREA OF
THE BAY OF FUNDY, NEW BRUNSWICK

TASK REPORT

Parks Canada Parcs Canada

Tourism New Brunswick Tourisme Nouveau-Brunswick

INSTITUTIONAL AND ADMINISTRATIVE ARRANGEMENTS FOR NATIONAL MARINE PARK MANAGEMENT

WEST ISLES FEASIBILITY STUDY

PARKS CANADA/TOURISM NEW BRUNSWICK

DECEMBER, 1985

FOREWORD

The West Isles Feasibility Study was initiated by the federal Minister of the Environment responsible for Parks Canada and the New Brunswick Minister of Tourism in November, 1983. The purpose of the study is to assess the feasibility of establishing a national marine park in the West Isles area of the Bay of Fundy.

The West Isles Feasibility Study is being conducted in three phases. Phase I is an assessment of the technical feasibility of establishing a national marine park in the West Isles area, from the perspective of Parks Canada and Tourism New Brunswick. If Ministers decide to proceed with the study, Phase II would involve extensive public consultation to provide the local public with the opportunity to become directly involved in the process to decide whether or not the West Isles proposal is feasible. The purpose of Phase III would be to analyse the results of the two preceeding phases, and to prepare a final report based on the findings, with recommendations for a future course of action.

In the process of completing Phase I, nine individual studies were conducted to investigate specific aspects of the feasibility assessment, all of which are summarized in the Phase I report. These nine studies include the following:

1. Recommended Resource Management Guidelines
2. Institutional and Administrative Arrangements
3. Optional Visitor Use Concepts
4. Transportation Analysis
5. Tourism Development Plan
6. Socio-Economic Impact Study
7. Historical/Archaeological Concerns and Opportunities
8. Land Ownership Inventory
9. Analysis and Summary of Public Comments

Copies of the above reports are available upon request from the following addresses:

Department of Tourism,
Recreation and Heritage*
P.O. Box 12345
Fredericton, New Brunswick
E3B 5C3
Phone: (506) 453-2624

Parks Canada
10 Wellington Street
Hull, Quebec
K1A 1G1
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* Throughout this report the former title Tourism New Brunswick has been used. The correct title is now the Department of Tourism, Recreation and Heritage.

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INSTITUTIONAL AND ADMINISTRATIVE ARRANGEMENTS FOR NATIONAL MARINE PARK MANAGEMENT

EXECUTIVE SUMMARY

Introduction

The establishment of National Marine Parks in Canada will add a new and yet another resource activity to the growing spectrum of demands being placed on the marine environment. Attempts to organize a coastal zone management regime to manage these activities, on both the terrestrial and marine components of the coastal zone, have met with little success in Canada. An alternative, however, the sectoral approach to coastal planning, is being successfully adopted at unprecedented levels. Given the multiplicity of jurisdictions and high diversity of resource interests in the marine environment, this approach provides a focus, either a specific resource activity, management issue or geographic area, on which to concentrate cooperative management efforts. National marine parks provide just such a focus.

Existing Institutional Arrangements for Marine Environmental Management

The major actors involved in managing the marine environment, and the coastal zone, in the West Isles area include seven federal government departments, with twelve individual agencies, and six provincial government departments. In total, these agencies administer approximately 34 pieces of legislation, with a host of regulations, that govern, to one extent or another, marine or coastal activities.

Within such a complex scenario, the development of an effective cooperative management system must simplify and streamline the decision-making process by directly involving only the key agencies and designing an appropriate administrative structure. The key agencies should include Parks Canada of Environment Canada (DOE), the Fisheries Operations and Fisheries Research Branches of the Atlantic Fisheries Service of Fisheries and Oceans (DFO), and the Canadian Coast Guard of Transport Canada (DOT). For at least the initial years of park establishment and management, the close cooperation of the five provincial government departments of Municipal Affairs, Environment, Natural Resources, Tourism, and Historical and Cultural Resources would be necessary.

Optional Administrative Arrangements for National Marine Park Management

On the basis of the extensive research and analysis of the available options for effecting linked or cooperative management that was conducted for the Fraser River Estuary Study, three options have been evaluated as to their applicability to the West Isles situation. The three options include:

1. continue the existing management process (i.e. maintain the status quo);
2. create a new special purpose agency to manage the park/estuary;
3. adopt one or a combination of three approaches to cooperative management:
    - i) key agency committee
    - ii) lead agency agreements
    - iii) council of park/estuary agencies.

The evaluation concluded that Option 3 was the most appropriate, and that a combination of approaches i) and ii) to cooperative management would be most effective. A key agency committee would be responsible for interagency coordination and planning, and lead agencies, nominated and committed by protocol agreement, would be responsible for implementation.

The management and administration of the Great Barrier Reef Marine Park in Australia has been conducted very successfully using this approach.

Cooperative Management in the West Isles

The proposed cooperative management system for the West Isles consists of two committees, a provision for regional intergovernmental liaison and the identification of lead agencies for implementation. The intent of this cooperative management system would be to interfere as little as possible with the existing jurisdictional authority of the agencies currently involved in marine and coastal management, but to ensure the effective coordination of their activities to achieve a common goal.

Three lead agencies have been identified and their respective roles and responsibilities are as follows:

The Role of Parks Canada

Parks Canada would be responsible for the overall management of a national marine park, and would play the lead role in ensuring the coordination of its activities with those of Fisheries and Oceans, Transport and other agencies as required. Parks Canada would be entirely responsible for resource protection in those terrestrial portions of a marine park, such as those offshore islands that may be part of the park, for all visitor activity programs and related facilities, and for non-marine wildlife management. Parks Canada would also be the lead agency responsible for the preparation and implementation of a park management plan, in cooperation with other government agencies and in consultation with the local public. Through cooperative agreements with other agencies, Parks Canada would play an active role in the protection and conservation of natural and cultural marine resources, marine research, search and rescue and emergency response, the provision and maintenance of navigational aids, and the regulation and control of recreational and tour boating, fishing and SCUBA diving.

The Role of Fisheries and Oceans

The Department of Fisheries and Oceans (DFO) would continue to be the lead agency responsible for the management of commercial and non-commercial fisheries and of marine mammals, for marine research and for the conservation and protection of marine habitats under the provisions of the Fisheries Act. The establishment of a national marine park would not affect DFO's jurisdiction over the management of fish stocks. Through a cooperative agreement with Parks Canada, DFO and Parks Canada would jointly prepare a fisheries management plan for the marine park, at the time of park establishment, that would be consistent with DFO's regional fisheries management plans but would also address those fisheries management concerns that relate to park management and operation. The fisheries management plan for the park would comprise a portion of the park management plan prepared by Parks Canada.

The Role of Transport

The Department of Transport (DOT) would retain its role as lead agency responsible for marine transportation under the provisions of the Canada Shipping Act. In general, the establishment of a national marine park would not effect DOT's jurisdiction over marine transportation. In particular, and with specific respect to marine park management requirements, DOT would continue to manage commercial vessel traffic, shipping safety, search and rescue operations, environmental emergency response, and the provision and maintenance of navigational aids. DOT would also continue to administer the provisions of the Navigable Waters Protection Act and the Transportation of Dangerous Goods Act within marine park waters. Under a cooperative agreement with DOT, Parks Canada would play an active role in the regulation and control of recreational and tour boating and boating safety in marine park waters, would assist in the provision and maintenance of navigational aids and in search and rescue and environmental emergency operations.

A Proposed Cooperative Management System

A cooperative management system in the West Isles must provide for three levels of cooperation:

1) Parks Canada - other federal agencies
2) Parks Canada - provincial agencies
3) Parks Canada - local public/special interest groups

To this effect, two committees are proposed as follows:

- a national marine park public consultation committee;
- a national marine park interdepartmental coordination committee.

In addition, a less formal regional intergovernmental liaison function would be recognized and consultation with other government agencies, over and above the lead agencies, would occur as required.

1) The National Marine Park Public Consultation Committee

Purpose

The purpose of this committee would be to provide opportunities, on a regular and systematic basis, for the local public to participate in the decision-making process with Parks Canada, DFO and DOT on matters relating to park planning, management, implementation and operations.

Membership

This committee could consist of members of the local public, special interest groups and organizatons that have a direct interest in how the park is managed. Participants could include, for example, representatives from the Deer Island Steering Committee, Chamber of Commerce, Local Service Districts, the Fundy Weir Fishermen's Association and representatives of other sectors of the fishing industry, local municipal councils, tourism associations, private industry, etc. In addition, formal public consultation would take place as required to ensure input from others not associated with this committee. It is important to note that this committee would not replace nor supercede the public consultation mechanisms utilized by DFO in the preparation of its regional fisheries management plans.

2) The National Marine Park Interdepartmental Coordination Committee

Purpose

The primary role of this committee would be to coordinate the formulation and implementation of the policies and programs of its member agencies to be as consistent as possible with the management goals and objectives of a national marine park.

Membership

Ths committee would represent the local management level of the lead agencies involved in the management and operation of the park and the various activities that take place within it, namely Parks Canada, as the committee coordinator, DFO and DOT.

Discussion

It is recognized in the draft National Marine Parks Policy that both DFO and DOT will retain their traditional jurisdictions over fisheries and marine transportation. Therefore, this approach provides for the individual decision making authority of each agency which is executed following the necessary coordination with each other through the committee. Under this arrangement, the Park Superintendent would retain full authority over park operations and management with the exception of certain functions, such as commercial fisheries and marine transportation. The committee would consult with other federal or provincial agencies and the public consultation committee, as required.

The committee could also act as a central point of access for the public on park related matters, in particular, for the National Marine Park Public Consultation Committee.

3) Regional Intergovernmental Liaison

In order for a national marine park to be managed effectively, it must be managed in a regional context, preferably within a comprehensive coastal zone management framework. At a minimum, however, as noted in Section 2.2.4 of the draft National Marine Parks Policy, "cooperative arrangement will be sought with provincial and ... other federal departments and agencies, and foreign governments to mitigate the effects of any external activity which could threaten marine park resources and impair the quality of the regions aquatic environment". It is not proposed that a formal committee be established for this purpose, but that it be recognized that the need for liaison with other government agencies, at all levels, would be periodically necessary and that the appropriate consultations would be sought as required.

Purpose

The purpsoe of this liaison would be to coordinate as required the efforts of those agencies involved in the management of resources and associated activities in the regional coastal environment to ensure that the marine environment of the park is not impaired and to monitor the impact of the park on the surrounding region.

Agencies to be Consulted

The principle agencies to be consulted would include the Environmental Protection Service and those provincial agencies responsible for land use and water pollution control, including the Departments of Municipal Affairs, Fisheries, Environment and the Crown Lands Division of the Department of Natural Resources. Other agencies such as Tourism New Brunswick or the appropriate agencies from the State of Maine could be consulted as necessary. Linkage to the International Joint Commission, if not required directly, could be established through DFO.

4) Optional Organizational Structures

Two alternative structures for the organizational relationship of the National Marine Park Interdepartmental Committee and its members with the National Marine Park Public Consultation Committee were considered. In Option 1, the park interdepartmental coordinating committee consults directly with the public consultation committee. In Option 2, however, the Park Superintendent, as coordinator of the interdepartmental committee, consults with the public consultation committee and then refers it to the interdepartmental committee for consideration.

These options are presented here to demonstrate that alternatives do exist for the organizational structure of these committees. No attempt has yet been made to determine which would operate the most effectively in the West Isles.

1.0 INTRODUCTION

The establishment of national marine parks in Canada will add yet another variable to an already very complex equation. The multiplicity of jurisdictions in the coastal and marine environments, distributed amongst all levels of government, have evolved over the last century of settlement and associated industrial activity in response to the growing intensity and diversity of management concerns and resource use conflicts. Ironically, it is not uncommon for many of the responsible managing agencies, given their different constitutional responsibilities and areas of interest, to find themselves in competition and/or conflict with each other. It has long been recognized that the existing institutional and administrative arrangements for managing the coastal zone lack the coordinative approach necessary to achieve the collective goals of all the parties and interests involved, both in the public and private sectors (Johnston, et al, 1975, CCREM, 1978, Harrison and Parkes, 1983). Yet, the progress toward establishing a comprehensive and systematic coastal zone management regime in Canada has not been successful:

> "The debate over shore zone management in Canada... has focussed on the difficulty of allocating a highly diverse resource in an appropriate manner, and has also addressed in great detail the somewhat quixotic problem of managing resources in a federal system characterized by multiple and overlapping jurisdictions. To date, few definitive conclusions have been reached, and policy initiatives treating the coastal zone as a system are few and far between." (Harrison and Parkes, 1983, pp. 2-3)

The abolishment of the Shorezone Coordinator position in Environment Canada and the lack of significant action following the 1978 Shore Management Symposium led Hanson (1983) to conclude that the "...emergence of any national office for coordinated programs of coastal zone planning and management is highly unlikely."

Within this scenario, for national marine parks to be effectively managed, two features peculiar to marine parks must be recognized. Firstly, that by their very nature, national marine parks will have to be managed in a regional context. While this is also the case for terrestrial parks, the fluid and highly mobile characteristics of the marine resource will require a concerted and coordinated effort to control the effects of external environmental influences on park waters. Secondly, the marine resource is subject to a wide variety of resource uses which, for the most part, and in direct contrast to the situation in terrestrial national parks, will be permitted to continue. The expertise and experience to manage these activities is substantial and available, but is distributed amongst the various agencies responsible for a particular resource sector or activity. A cooperative management approach will be essential to integrate and coordinate these management efforts to achieve an agreed upon, and common, set of goals and objectives, both for the park itself and the adjacent waters and coastal lands exerting an external influence upon it.

The prospects for this approach in the Canadian context is encouraging and is meeting with success in other aspects of marine environmental management. Hanson (1983) has observed that "coastal zone **sectoral** planning and decision-making actions have reached unprecedented levels" (my emphasis). Cited as examples are the Fraser River Estuary Management Program, Great Lakes phosphate control, an oil spill contingency plan for the Bay of Fundy and the protection of marine mammal stocks in the Arctic. This sectoral approach relies on a central focus or issue upon which to concentrate cooperative management efforts. A national marine park provides such a focus.

This report is prepared as one of several tasks of the West Isles Feasibility Study to accomplish the following:

1. determine the current role, responsibilites and programs of the various government agencies, both federal and provincial, involved in the management of the marine environment in the study area.

2. determine the administrative requirements for marine park management, define the roles of the various agencies involved as they relate to park management and outline the general nature of an agreement or other working arrangement with or amongst these agencies to effect cooperative management.

Section 2.0 of this report outlines the roles and responsibilities of the various federal and provincial agencies, their programs and the enabling legislation as they relate to their activities in marine environmental management.

Section 3.0, using the Fraser River Estuary Study as a case example, reviews the administrative options available to effect cooperative management. The most suitable of these approaches to the West Isles situation is identified and the details of the successful application of this approach by the Great Barrier Reef Marine Park Authority in Australia is reviewed.

Section 4.0 applies this approach to the West Isles situation given the existing institutional and administrative arrangements identified in Section 2.0.

2.0 EXISTING INSTITUTIONAL ARRANGEMENTS FOR MARINE ENVIRONMENTAL MANAGEMENT

2.1 THE DEPARTMENT OF ENVIRONMENT (DOE)

2.1.1 Mandate

That part of the Government Organization Act (1979) that governs the Department of the Environment (DOE) defines the duties, powers and functions of the Minister as:

i) the preservation and enhancement of the quality of the natural environment, including water, air and soil quality;
ii) the coordination of the policies and programs of the Government of Canada respecting the preservation and enhancement of the quality of the natural environment.

While the Act does not specifically give DOE a mandate over the marine environment, as is the case with DFO, its mandate for the preservation and enhancement of the quality of the natural environment includes the oceans by direct implication. DOE has in fact, taken the lead role in many aspects of marine environmental management through the sole or joint administration of ten pieces of legislation:

- Clean Air Act 1971;
- Ocean Dumping Control Act 1974-75;
- Environmental Contaminants Act 1974 (joint with National Health and Welfare);
- Canada Water Act 1970;

- International Boundary Waters Treaty Act 1909 (joint with External Affairs)

- Migratory Birds Convention Act 1970;

- Canada Wildlife Act 1973-74;

- National Parks Act 1970;

- Fisheries Act (joint with DFO);

- Transportation of Dangerous Goods Act 1980 (joint with DOT).

Although in a less direct sense, DOE also has a role to play in the administration of the following legislation impacting on the marine environment:

- Arctic Waters Pollution Prevention Act (DINA);

- Canada Shipping Act (DOT);

- Navigable Waters Protection Act (DOT);

- Northern Inland Waters Act (DINA).

2.1.2 Organization and Responsibilities

The administration of these Acts is conducted through Parks Canada, in the case of the National Parks Act, and through the various environmental service agencies within DOE, in particular, the Environmental Protection Service, the Environmental Conservation Service and the Canadian Wildlife Service.

Environmental Protection Service (EPS)

The goal of EPS is to protect and enhance the quality of our environment and its components. In carrying out this mandate, EPS is responsible for:

i) air pollution control;
ii) water pollution control;
iii) management of toxic chemicals;
iv) control of environmental contaminants;
v) environmental emergencies;
vi) waste management;
vii) policy, planning and assessment.

Under Canada's Clean Air Act 1971, the principal concern of the air pollution control program has been the long-range transport of air pollutants and the resulting problem of acid rain. The Act provides for the Minister to establish monitoring stations, collect data, conduct research, formulate control plans, enter into cooperative arrangements with provinces and others, establish contaminant objectives and national standards, and form advisory boards and committees.

The water pollution control program in the marine environment operates under the auspices of several pieces of legislation, but primarily the Fisheries Act and the Ocean Dumping Control Act. DOE, through EPS, and DFO jointly administer the Fisheries Act, where EPS is the lead agency responsible for Section 33 of the Act relating to "Injury to Fishing Grounds and Pollution of Waters". Regional EPS staff negotiate with the provinces, industries and municipalities, and work in cooperation with DFO, to implement pollution control measures designed to protect the fisheries resource and the marine environment in general (see Section 2.2.3 for details).

EPS administers the Ocean Dumping Control Act through Regional Ocean Dumping Advisory Committees (RODACs) which are chaired by EPS and include representatives from DFO, CWS, the concerned province(s) and, where appropriate, DINA. The RODACs review applications for dumping permits and make a recommendation to the Regional Director of EPS who issues or denies the permit. Approximately 90% of the permits are for the disposal of harbour dredged material (see Section 2.1.3).

The Toxic Chemicals Management Program (TCMP), efforts under the Environmental Contaminants Act, and the contribution by EPS to DOT in the administration of the Transportation of Dangerous Goods Act (TGDA) all work toward the control and maintenance of marine environmental quality. The TGDA is discussed in more detail in Section 2.1.3.

The Environmental Contaminants Act is jointly administered by DOE and National Health and Welfare. The purpose of the Act is "to protect human health and the environment from substances that contaminate the environment". The Act was designed as a preventative measure and to eliminate the introduction of hazardous substances into the environment by controlling them at the source. The Act requires those who import, manufacture or process those substances specified in the Regulations to furnish information to the Minister.

The Act identifies in its Schedule those substances that are environmental contaminants and authorizes data collection, entry, inspection, seizure and imprisonment. Unlike the Ocean Dumping Control Act and the Transportation of Dangerous Goods Act, the Environmental Contaminants Act does not provide for a permitting system, and, as such, would not form part of the ongoing regulatory process within National Marine Parks.

EPS also plays the lead role within DOE regarding the response to environmental emergency situations. The 1973 Cabinet Directive concerning "Environmental Emergencies Activities of Environment Canada" addressed all possible environmental emergency situations, but efforts have been directed largely at petroleum and other chemical spills. The Directive provided for the establishment of Regional Environmental Emergency Teams (REET's) and the National Environmental Emergency Team (NEET). Agreements have been struck between DOE, DFO and DOT to establish these teams and to provide the coordination and communication amongst these agencies. Due to the distribution of federal responsibilities regarding the marine environment, DOT (Canadian Coast Guard) has the lead responsibility for ship born oil spills, COGLA for spills from offshore petroleum exploration and production structures and DOE (EPS) for mystery spills and land originated spills. The provinces also become directly involved with spills from land based sources which may jeopardize the quality of the marine environment.

Such a REET has been established in the West Isles area, chaired by EPS and includes the membership of DFO, DOT and New Brunswick Environment. A marine emergency station has been established at the St. Andrews Biological Station with initial response capability for oil and other chemical spills in the West Isles area.

Environmental Conservation Service (ECS)

ECS formerly promoted the coordination of federal shore-zone programs through the Interdepartmental Shore-Zone Working Group, one of the results of this effort being the Canada-British Columbia Fraser River Estuary Study. Since this program was disbanded, the principal interest of ECS in the marine environment is through its administration of the Canada Water Act. The Inland Waters Directorate plans and takes part in national and international water management programs and conducts research on the quantity and quality of inland waters. It coordinates Canada's responses to boundary water problems, and undertakes river basin planning with the provinces. The Canada Water Act provides for the creation of water quality management areas and for plans to be prepared and implemented in federal and international waters. Further detail is provided in Section 2.1.3.

Canadian Wildlife Service (CWS)

Under the Migratory Birds Convention Act, the CWS is responsible for the protection and management of migratory birds by developing and enforcing regulations that control migratory game bird hunting, protect certain species of migratory birds, monitor bird populations, and preserve wildlife habitat. In cooperation with the provinces and other wildlife agencies, CWS undertakes research, management and interpretation programs on birds and other wildlife and provides advise to federal, territorial and provincial agencies.

The Canada Wildife Act 1973 is of limited interest with respect to National Marine Parks. It empowers the Minister to:

- undertake, promote or recommend measures for the encouragement of public cooperation in wildlife conservation and interpretation;
- initiate conferences and meetings respecting wildlife research, conservation and interpretation;
- undertake programs for wildlife research and investigation and establish and maintain laboratories and other necessary facilities for that purpose;
- establish such advisory committees as he deems necessary and appoint the members thereof; and
- coordinate and implement wildlife policies and programs in cooperation with the government of the province having an interest therein.

Parks Canada

While a variety of government agencies and programs are concerned with environmental protection in the marine environment, the only program currently active within the federal government to protect and conserve a specific marine environment is Parks Canada's recent initiative to establish a system of National Marine Parks. Under the auspices of the National Parks Act, Parks Canada's objective for National Marine Parks is, as stated in the draft National Marine Parks Policy (May 1, 1985):

- to protect and conserve for all time representative marine natural areas of Canadian significance in a system of marine parks, so as to leave them unimpaired for future generations and to encourage public understanding, appreciation and enjoyment of Canada's marine heritage.

For further information, the reader is directed to the draft National Marine Parks Policy.

2.1.3 Legislation

Further to the brief description of the relevant legislation introduced above, the following is a more detailed description of the provisions of those pieces of legislation of particular interest to National Marine Parks.

The Transportation of Dangerous Goods Act

The Transportation of Dangerous Goods Act, 1980 (TGDA) is intended to promote public safety in the transportation of dangerous goods. The lead agency in the administration of the Act is DOT, but by a Memorandum of Understanding between DOE and DOT, the Industrial Programs Branch of EPS will work with the Transport of Dangerous Goods Directorate of DOT to "consult and cooperate in the development and implementation of joint programmes and the administration of Regulations designed to promote safety and to protect the environment in the transporting of dangerous goods..."

The Regulations to the TGD Act have been published and are in force. Where the TDG Regulations are silent any existing regulations under the Canadian Shipping Act will apply. The Canadian Coast Guard will continue to be the enforcement agency for the transport of dangerous goods in the marine environment.

Permits for the transport of dangerous goods will be issued by the Dangerous Goods Directorate in DOT headquarters and input to this process will be obtained from DOE regarding environmentally dangerous goods.

Under the terms of the Memorandum of Understanding, DOE's responsibilities include:

i) provide technical advice and information to DOT concerning the presevation and enhancement of the environment in the transportation of dangerous goods;

ii) assist in the review and maintenance of the Canadian Transport Emergency Centre (CANUTEC) management information system file of scientific data by providing all necessary relevant information;

iii) advise DOT about the preparation of modules for the training and qualifying of inspectors appointed in accordance with the Act for the carrying out of duties related to environmental problems arising in the transportation of dangerous goods;

iv) recommend, where it deems advisable, that specific environmentally hazardous substances or dangerous wastes be included or deleted in one or more of the Classes of Dangerous Goods in the Schedules to the Regulations under the Act;

v) be responsible for the development and implementation of a manifest system for the tracking of dangerous wastes;

vi) maintain liaison with territorial, provincial, national and international environmental agencies in order to advise and inform DOT on matters relating to the transportation of dangerous goods so as to encourage cooperation and coordination between the federal transportation of dangerous goods program and the provincial environmental protection programs;

vii) recommend, where it deems advisable that regulatory initiatives relating to environmentally hazardous substances and dangerous wastes are required. DOE shall prepare in conjunction with such recommendations and in accordance with Treasury Board Guidelines, a socio-economic impact analysis, the results of which analysis shall be forwarded to DOT together with the recommendations thereto.

The MOU also outlines DOT's responsibilities to DOE, the most significant of which include:

i) advise DOE of any spill which is reported to DOT through CANUTEC:

ii) consult with DOE before any company or individual is charged with an offence, other than a ticketing offence, for the contravention of any regulation under the TDG Act which relates to environmentally hazardous substances or dangerous wastes;

iii) consult with DOE with respect to compliance with policy or a strategy concerning criteria for charging companies with an offence with environmental implications;

iv) take into account, in the exercise of its authority under the TDGA and the Regulations thereto, the standards, objectives and criteria developed by DOE in exercising DOE's regulatory and administrative jurisdiction relating to the issuance of permits for the dumping of substances under THE OCEAN DUMPING CONTROL ACT, S.C. 1974-75, c.55;

v) consult with DOE to ascertain the strategies necessary to ensure effective public participation and consultation for all proposed regulatory initiatives to be undertaken pursuant to the TDG Act that are related to environmentally hazardous substances and dangerous wastes;

vi) consult with DOE before undertaking any regulatory initiative under the TDG Act which may:

   a) affect current regulations related to environmentally hazardous substances or dangerous wastes, or

   b) result in any activity in the transporting of dangerous goods which could result in adverse effects on the preservation and enhancement of the quality of the environment;

vii) implement after consultation with DOE as per paragraph (v) above, the DOE Department's recommendations on any regulatory initiative to be undertaken under the TDG Act.

With this MOU, then, a good referral system will exist between DOE and DOT regarding the transportation of dangerous goods. Should the need ever arise where Parks Canada has a concern over the movement of dangerous goods through or near marine park waters, it can communicate its concern through the Industrial Programs Branch of DOE or directly to the Director General of the Transport of Dangerous Goods Directorate.

The Ocean Dumping Control Act

The Ocean Dumping Control Act was assented to in June, 1975 to provide for the control of the dumping of waste and other substances in the oceans. The Act was passed in compliance with Canada's international responsibilities under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, which Canada signed on December 29, 1972.

Dumping, as defined in the Act, refers to:

Any deliberate disposal from ships, aircraft, platforms or other man-made structures at sea of any substance but does not include:

- any disposal that is incidental to or derived from the normal operations of a ship or an aircraft or of any equipment thereof other than the disposal of substances from a ship or aircraft operated for the purpose of disposing of such substances at sea, and

- any discharge that is incidental to or derived from the exploration for, exploitation of and associated off-shore processing of sea bed mineral resources.

The term "ship" includes "any description of vessel, boat or craft used or capable of being used solely or partly for marine navigation without regard to method or lack of propulsion". (Section 2(1)).

The prohibitions under the Act include:

4. (1) No person shall dump except in accordance with the terms and conditions of a permit.

(2) Subsection (1) applies to dumping

(a) from any ship, aircraft, platform or other man-made structure in any area of the sea referred to in paragraphs 2(2)(a) to (e);

(b) from any Canadian ship or Canadian aircraft in any area of the sea other than those referred to in paragraphs 2(2)(a) to (e) unless the dumping is pursuant to a permit validly granted in accordance with the Convention by a contracting party other than Canada; and

(c) from any ship or aircraft other than Canadian ships or Canadian aircraft in any area of the sea other than those referred to in paragraphs 2(2)(a) to (e) if the substance intended for dumping has been loaded on such ship or aircraft in Canada.

5. (1) No person shall load on any ship or aircraft in Canada for the purpose of dumping any substance except

in accordance with the terms and conditions of a permit.

(2) No master in charge of a Canadian ship and no pilot in command of a Canadian aircraft shall, while such ship or aircraft is outside Canada, permit the loading on such ship or aircraft for the purpose of dumping any substance unless the loading is pursuant to

(a) a permit granted under this Act; or

(b) a permit granted in accordance with the Convention by a contracting party in respect of a substance loaded on the ship or aircraft in the territory of such party.

6. No person shall dispose of any substance at sea by placing it on ice in any area of the sea referred to in paragraphs 2(2)(a) to (e) except in accordance with the terms and conditions of a permit.

7. (1) No person shall dispose of any ship, aircraft, platform or other man-made structure at sea except in accordance with the terms and conditions of a permit.

(2) Subsection (1) applies to the disposal of

(a) any ship, aircraft, platform or other man-made structure in any area of the sea referred to in paragraphs 2(2)(a) to (e); and

(b) any Canadian ship or Canadian aircraft in any area of the sea other than those referred to in paragraphs 2(2)(a) to (e).

8. (1) Nothwithstanding subsection 4(1), a person may dump without a permit if the dumping is necessary to avert danger to human life at sea or to any ship or aircraft.

(2) Any dumping pursuant to subsection (1) shall, as far as possible, be carried out in a manner that will minimize danger to human life and damage to the marine environment.

Of interest is that the Act's provisions do not apply to the by-products of sea bed mining, where disposal is considered a part of the "normal" operations of the vehicles/vessels involved (Environment Canada, 1984).

Applications for dumping permits are considered in view of the wide variety of factors listed in Schedule III of the Act including the characteristics and composition of the substance, the dumping site, the method of disposal and other considerations such as the possible effect on marine life and its exploitation. Permits are issued with specific terms and conditions relating to the above considerations as are deemed necessary in the interests of human life, marine life and any legitimate uses of the sea.

Permits are issued by the Regional Directors of EPS on the recommendation of Regional Ocean Dumping Advisory Committees (RODACs). These Committees generally include the representation of EPS (Chairman, secretary), DFO, CWS, the province, and, where appropriate, DINA. Where Parks Canada has a direct interest in ocean dumping activities, it could gain membership on the appropriate regional committee. Otherwise it could express its concern through EPS.

The Canada Water Act

The Canada Water Act 1970 is the most predominate Act in Canada providing the statutory provisions for the planning and management of water resources for federal, inter-jurisdictional and boundary waters.

The Act is subdivided into four sections dealing with: Part I - Comprehensive Water Resource Management; Part II - Water Quality Management, Pollution of Waters; Part III - Nutrients; and Part IV - General, including provisions for inspectors and analysts, advisory committees, public information programs, offences, etc.

Part I is administered by the Inland Waters Directorate of ECS, and has been summarized as follows by Alexander (1982). Within Part I,

> "Section 3 (c) of this Act empowers the Minister to enter agreements with provincial governments to "facilitate and coordinate implementation of water policies and programs". Section 4, under the title "Comprehensive Water Resource Management Programs", allows the Minister to enter into agreements [with one or more provincial governments having an interest in those waters] regarding comprehensive water management programs, including the establishment and maintaining of resource inventories (section 4(a)), collecting and processing and providing of data (section 4(b)), conducting research in quality, quantity and use of water (section 4(c)), formulation of comprehensive plans based on a full range of alternatives, taking into account use expressed at public hearings (section 4(d)), design of

> conservation projects (section 4(e)) and implementation of any plan or project referred to in sections 4(d), 4(e) and 4(f). These projects would presumably include more than just water quality management, because section 9 of the Act allows such arrangements to be made specifically for water quality."

Section 5 of the Act reads as follows:

> (1) Subject to subsection (2), the Minister shall, with the approval of the Governor in Council, undertake directly,
>
> (a) with respect to any federal waters, any programs described in any of paragraphs 4(a) to (e) and the implementation of any program described in paragraph 4(d) or (e);
>
> (b) with respect to any inter-jurisdictional waters where there is a significant national interest in the water resource management thereof, any program described in paragraph 4(d) or (e); and
>
> (c) with respect to any international or boundary waters where there is a significant national interest in the water resource management thereof, any program described in paragraph 4(d) or (e) and the implementation of any such program.

This section is, apparently, a very valuable tool for the Minister. Under section 5.1, the Minister may unilaterally undertake such programs outlined in section 4 in federal and international waters, including implementation of these plans. However for inter-jurisdictional waters, the

Minister may only undertake planning and design, and not implementation (section 5.1 (b)).

Alexander (1982) continues his summary:

> "Section 7 of the Act describes the terms which shall be contained in such agreements with respect to the constitution of any bodies formed, provision of staff, duties of the bodies, task and costs to be borne by each government, authorities granted and loans or grants involved, etc. As mentioned above, sections 9 through 15 (Part II) allow for the creation of water quality agencies under the Act. Section 9 is similar to section 4 in that it specifies that the Minister may enter agreements regarding all phases of water quality management. It also creates water quality management areas."

Section 9, under the title of Federal-Provincial Water Quality Management, reads as follows:

9. In the case of

> (a) any waters, other than federal waters, the water quality management of which has become a matter of urgent national concern, or
>
> (b) any federal waters, the Minister may, with the approval of the Governor in Council, from time to time enter into agreements with one or more provincial governments having an interest in the water quality management thereof, designating those waters as a water quality management area, providing for water quality management programs in respect thereof and authorizing

> the Minister, jointly with such one or more provincial governments, to procure the incorporation of a corporation without share capital, or to name an existing corporation that is an agent to Her Majesty in right of Canada or a province or that performs any function or duty on behalf of the Government of Canada or the government of a province, as a water quality management agency to plan, initiate and carry out, in conjunction with the Minister and such provincial government or governments, programs described in section 13 in respect of those waters.

The overriding intent of water quality management areas is to plan and manage to achieve the pollution prohibition objective outlined in Section 8:

> 8. Except in quantities and under conditions prescribed with respect to waste disposal in the water quality management area in question, including the payment of any effluent discharge fee prescribed therefor, no person shall deposit or permit the deposit of waste of any type in any waters comprising a water quality management area designated pursuant to section 9 or 11, or in any place under any conditions where such waste or any other waste that results from the deposit of such waste may enter any such waters.

According to the Corporate Planning Group (CPG) of DOE, however, Section 9 of the Act "is not used because of the difficulty in establishing water quality management areas and agencies with the provincial government. Other federal/provincial agreements and strategies with the same objectives have been substituted." (Environment Canada, 1984, p. 29). Two good examples of this alternative are the Fraser River Estuary Study initiated in 1977 under agreement between Environment Canada and the B.C. Ministry of Environment, and the Canada-Ontario Agreement Respecting Great Lakes Water Quality. The reason that no water quality management areas have been established is that the situation has to be proven to be "a matter of urgent national concern", and this state of urgency has never been established.

To complete this summary of the Act, Alexander (1982) continues:

> "Section 11 is similar to section 5 in that it allows the federal Minister to act unilaterally where there is an "urgent national concern". However, the power is not in this case restricted to planning in inter-jurisdictional rivers; it allows sweeping implementation of such things as setting mandatory standards (section 13.1(c)(i)), allowable effluent discharges (section 13.1(c)(ii)), treatment (iii) and fees for discharge (iv). Section 13(3) allows actual design, construction and operation of treatment facilities by the management agency. Section 16 of the Act allows regulations to be made by the Minister regarding water quality in general, but not comprehensive management. Presumably Parliament has gone as far as it wishes in that field.
>
> Both sections 5 and 11 refer to "significant national interest" or "urgent national concerns" in order to support unilateral action. Here Parliament was presumably relying on the "national dimension" theory for its authority. Section 91 generally of the British North America Act has been interpreted in Canadian constitutional law to

give to the Parliament a power to create laws for the "peace, order and good government" of the country. The application of this power to resource management and control is questionable."

2.2 THE DEPARTMENT OF FISHERIES AND OCEANS (DFO)

2.2.1 Mandate

The powers and responsibilities of the Minister of Fisheries and Oceans are defined in the Department of Fisheries and Oceans Act, and include jurisdiction over:

i) sea coast and inland fisheries;
ii) fishing and recreational harbours;
iii) hydrography and marine sciences; and
iv) the coordination of the policies and programs of the Government of Canada respecting oceans.

The objectives of the department are to ensure:

- the comprehensive husbandry and management of Canada's fisheries resource base, through the protection, rehabilitation and enhancement of individual fish stocks and the aquatic habitat upon which these resources depend;

- the "best use" of fisheries resources, through a variety of measures affecting when, where, how and by whom these resources are harvested, processed and marketed to obtain optimal social-economic benefits;

- an adequate hydrographic survey and chart production program to enable hydrographic charts and other publications to be produced for safe navigation in Canadian waters;

- the acquisition of the necessary knowledge base pertaining to oceanic processes and environments to support activities related to defence, marine transportation, the exploitation of offshore energy resources, and the management of the fishery resource and its aquatic habitat;

- the provision of a national ocean information service;

- the provision and administration of a national system of harbours in support of commercial fishing vessels and recreational boating (Department of Fisheries and Oceans, 1983).

2.2.2 Organization and Responsibilities

The department operates the vast majority of its programs under the auspicies of the Fisheries Act, and consists of four principal organizational components: Atlantic Fisheries, Pacific and Freshwater Fisheries, Fisheries Economic Development and Marketing, and Ocean Science and Surveys. A separate entity is responsible for the department's role with respect to small craft harbours.

The operational components of the department are highly decentralized, and function both from Ottawa and from regional offices and research establishments throughout Canada.

The management of Atlantic fish stocks is the responsibility of the Atlantic Fisheries Service, which is itself highly decentralized, operating within three geographic regions - Scotia-Fundy, Gulf and Newfoundland.

The Atlantic Fisheries Service (Scotia-Fundy Region)

The Scotia-Fundy Region includes the waters of the Scotian shelf and the Bay of Fundy extending out to the 200 mile limit. In addition, it includes the inland fish resources of the New Brunswick and Nova Scotia watersheds of the Bay of Fundy and Atlantic Ocean.

Within this regional context, the Atlantic Fisheries Service is organized into six Branches which cover the various departmental responsibilities outlined above. All Branches report to the Director General whose office is located at the Halifax regional headquarters. The six Branches are: Fisheries Research; Fisheries Operations; Small Craft Harbours; Fisheries Development; Economics; Management Services; and Personnel. Only the first three are of immediate interest here and are described below.

Fisheries Research Branch

The Fisheries Research Branch conducts scientific investigation and biological research on marine and freshwater fish and marine invertebrates, mammals and plants. The research generates advice on the management of these resources such as fishery management plans for both commercial and recreational fisheries. The projects include stock abundance forecasts, studies on ecology, population dynamics, the distribution and biology of species, toxicology, disease, nutrition and aquaculture.

The Branch consists of four divisions:

- Freshwater and Anadromous Division;
- Marine Fish Division (Bedford Institute of Oceanography; St. Andrews Biological Station);

- Invertebrates and Marine Plants Division (Regional headquarters, Halifax; St. Andrews Biological Station);
- Fisheries and Environmental Sciences (St. Andrews Biological Station).

Fisheries Operations Branch

The Fisheries Operations Branch is primarily involved with daily management and protection of the fisheries resources, including the quality control of fish catches and products. The Branch develops and enforces regulations concerning quotas, licences, fisheries closures, and the surveillance of fishing activities of both domestic and foreign vessels. Staff of this Branch includes fisheries and inspection officers, statisticians, biologists, chemists and fisheries managers.

As well, field operations of the Branch are organized under three Area Management Zones. The Area Management Zones are Eastern Nova Scotia, with headquarters in Sydney; Southwestern Nova Scotia with headquarters in Yarmouth; and Southern New Brunswick, with headquarters in St. Andrews. An Area Manager, in each zone, supervises the day-to-day activities of field staff and carries out various programs for the department.

Small Craft Harbours Branch

Under the Fishing and Recreational Harbours Act, the Small Craft Harbours Branch develops, administers and maintains fishing and recreational harbours and marine facilities in various locations throughout the Scotia-Fundy Region. The provisions of the Act are discussed in further detail later in this section.

The Branch is also responsible for administering the Marina Policy Assistance Program and the Tourist Wharf Program.

The Marina Policy Assistance Program

The intent of the Marina Policy Assistance Program is to encourage the development of additional public facilities for recreational boaters and tourists. Under the Policy, specified assistance may be granted to anyone who will provide new shoreward facilities for the boating public.

The Federal Government may build breakwaters and/or perform initial dredging in the harbour public areas, provided the developer will establish onshore facilities of equal dollar value. These onshore facilities may include wharves, launching ramps, roads, fuel, fresh water, electricity and telephone service, living and eating accommodation, boat repair shops, etc.

A formal agreement between the developer and the Department of Fisheries and Oceans must be executed, specifying the work that will be done by both parties.

The Tourist Wharf Program

Under the Tourist Wharf Program, the department may provide wharves and/or launching ramps, as an initial and one time capital expenditure in an area which has tourism potential or in which tourism is an established industry. The maximum expenditure that may be made in any one place (for a wharf, a launching ramp or the two combined) is $15,000.00.

It is essential that proper approach roads and parking areas be a part of each installation and these should be provided by the requester at no cost to the department. Full title to the site must be obtained, but a perpetual easement over the approach road and parking areas would satisfy this requirement. Where a launching ramp is to be installed, adequate parking space for cars and boat trailers should be provided.

Ocean Science and Surveys

The Ocean Science and Surveys (OSS) component of the department is responsible for national programs in oceanography and marine ecology, including the acquisition and dissemination of ocean related data and information and the surveying and charting of navigable waters in Canada's coastal and inland areas. OSS conducts both targetted basic and applied oceanography required for the support of all sectors of the Canadian economy: energy, fisheries, transportation and defence are the sectors most directly served.

At NCR headquarters, the Marine Sciences and Information Directorate carries out its responsibilities through the Ocean Science Affairs Branch, the Marine Environmental Data Service (MEDS) and the Scientific Information and Publications Branch. The policy formulation, coordination and main production elements of the Canadian Hydrographic Service are also located at NCR headquarters.

Oceanographic research and hydrographic field programs are directed from regional offices, and for the Atlantic coast are located at the Bedford Institute of Oceanography, Darmouth, N.S.

The Marine Environmental Data Service (MEDS)

The Marine Environmental Data Service (MEDS) is the central agency for receiving, archiving and managing quality controlled physico-chemical oceanographic data and for providing ocean information services. These services include those of three DFO sections that were amalgamated to create MEDS: Tides and Water Levels, Canadian Oceanographic Data Centre (CODC) and Wave Climate Study. It maintains the basis of ocean data via the Canadian Marine Data Inventory (CAMDI) of data holdings in government, industry and university.

MEDS' coordinated databank network stores information on estuarine and oceanic: temperature, conductivity, oxygen, sound velocity, pH, inorganic nutrients, tide and water levels, wave spectra, surface and bottom drifters, satellite-tracked buoys, currents and a variety of other data sets.

Canadian Hydrographic Service

The CHS conducts Canada's hydrography program of surveying and charting the coastline and inland navigable waters to fulfill a variety of needs of the marine community. The production of nautical charts includes those produced for specific areas of recreational interest for the use of small craft. Such Small Craft Charts have, for example, been produced for the Gulf Islands (1980), the Saint John River (1984), and the Rideau Waterway and Ottawa River (1984).

Oceanography and Marine Ecology

The departments' Bedford Institute of Oceanography is the base of operations for the Atlantic Region's oceanographic research and hydrographic survey programs. The Institute performs long-term research in all fields of the marine sciences as well as addressing urgent problems related to current industrial activities: the prediction and management of fish stocks; the effects of contamination and modification of the marine environment and the engineering difficulties associated with the exploration for and development of offshore hydrocarbon resources.

One project of interest, for example, is the study of chemical processes in the Bay of Fundy to increase understanding of sediment transport and accumulation processes in connection with the Point Lepreau Environmental Monitoring Program.

2.2.3 Legislation

The Fisheries Act

The Fisheries Act is the principle legislative instrument of the Department of Fisheries and Oceans to conserve and protect the living resources of the sea and inland waters and their habitat. It was enacted under the federal government's legislative authority over "the sea coast and inland fisheries" as awarded to it under the BNA Act.

The thrust of the Fisheries Act is directed towards two critical aspects of fisheries management: the management of fish stocks and the commercial fishery; and the protection of the natural environmental systems that support fish, ie. fish habitat.

The principal components of the Act can be categorized as follows:

Designation of Fisheries Officers (S.5,6)
Fishery Leases and Licences (S.7-9)
Seal Fishery (S.10,11)
Salmon Fishery (S.12-16)

Lobster Fisheries (S.17-18)
Illegal Possession of Fish (S.19)
Construction of Fishways (S.20)
General Prohibitions (S.21-29)
Destruction of Fish (S.30)
Destruction of Fish Habitat (S.31)
Pollution of Fish Habitat (S.33)
Provisions for Discard of Miscellaneous Materials (S.33)
Designation of Gurry Grounds (S.43)
Designation of Fish Sanctuaries (S.44)
Power to make Regulations (S.33,34)
Marine Plants (S.34)
Powers of Fisheries Officers (S.35-43)
Seizure of Equipment (S.58)
Offences and Penalities (S.50-68)

Definitions (S.2)

Fish: "fish" includes shellfish, crustaceous, marine animals and the eggs, spawn, spot and juvenile stages of fish, shellfish, crustaceans and marine animals.

Fishery: "fishery" includes the area, locality, place or station in or on which a pound, seine, net, weir or other fishing appliance is used, set, placed or located, and the area, tract or stretch of water in or from which fish may be taken by the said pound, seine, net, weir or other fishing appliance, and also the pound, seine, net, weir, or other fishing appliance used in connection therewith.

Fishing: "fishing" means fishing for, catching or attempting to catch fish by any method.

Fishing vessel: "fishing vessel" means any vessel used, outfitted or designed for the purpose of catching, processing or transporting fish.

Administration and Enforcement

The administration of the Fisheries Act is primarily, but not solely, the responsibility of DFO. DOE, through the Environmental Protection Service (EPS) has the joint responsibility with DFO to administer Section 33 of the Act, that dealing with pollution control.

Fisheries Management

DFO manages the commercial fishery through its authority to issue fishing licences and leases, impose species specific quotas and seasons, and enforce the Regulations under the Act. In the Maritimes these programs are administered by the Fisheries Operations Branch, Atlantic Fisheries Service and supervised by the Area Manager which, in the case of the Southern New Brunswick Area Management Zone, has its headquarters at the St. Andrews Biological Station. These programs operate on the basis of scientific advice provided by the Fisheries Research Branch.

Fishery leases and licences are issued under Section 7 of the Act:

> The Minister may, in his absolute discretion, wherever the exclusive right of fishing does not already exist by law, issue or authorize to be issued, leases and licences for fisheries or fishing, wherever situated or carried on; but except as hereinafter provided, leases or licences for any term exceeding nine years shall be issued only under authority of the Governor General in Council.

Section 21 of the Act protects the rights of those issued a licence or lease to fish:

> No one shall fish for, take, catch or kill fish in any water, or along any beach, or within any fishery described in any lease or licence, or place, use, draw or set therein any fishing gear or apparatus, except by permission of the occupant under such lease or licence for the time being, or shall disturb or injure any such fishery.

The operation and conduct of the commercial fishery is, by and large, controlled by a number of Regulations in place under the authority of Section 34 which empowers the Governor in Council to make Regulations for the following purposes:

(a) for the proper management and control of the seacoast and inland fishery;

(b) respecting the conservation and protection of fish;

(c) respecting the catching, loading, landing, handling, transporting, possession and disposal of fish;

(d) respecting the operation of fishing vessels;

(e) respecting the use of fishing gear and equipment;

(f) respecting the issue, suspension and cancellation of licences and leases;

(g) respecting the terms and conditions under which a lease or licence may be issued;

(h) respecting the obstruction and pollution of any waters frequented by fish;

(i) respecting the conservation and protection of spawning grounds;

(j) respecting the export of fish or any part thereof from Canada;

(k) respecting the taking or carrying of fish or any part thereof from one province of Canada to any other province;

(l) prescribing the powers and duties of persons engaged or employed in the administration or enforcement of this Act and providing for the carrying out of those duties and powers; and

(m) authorizing a person engaged or employed in the administration or enforcement of this Act to vary any close time or fishing quota that has been fixed by the regulations.

The list of Regulations currently in force under Section 34 is included as Appendix 1.

The Regulations and the terms and conditions of leases and licences are enforced in the field by a staff of Fisheries Officers under the supervision of the Area Manager. Fisheries Officers are appointed under Sections 5 and 6 of the Act and may include any person deemed qualified by the Governor in Council to act in that capacity. The powers of

Fishery Officers are defined in Sections 35-43 of the Act and are included in this report as Appendix 2.

Marine Plants

The harvesting of marine plants is regulated in accordance with subsections 34.1 to 34.5. Marine plants include all benthic and detached algae, marine flowering plants, brown, red and green algae and phytoplankton. Harvesting methods include cutting, taking, dredging or otherwise obtaining.

Subsection 34.1 provides that no person shall harvest marine plants in the coastal waters of Canada without a licence or in contravention of the regulations. The licences, which are issued for a term not exceeding one year, can be issued with terms and conditions relating to (Section 34.2):

(a) the nature of the gear and equipment to be used in such harvesting,

(b) the manner in which harvesting is to be carried out,

(c) the quantity of marine plants authorized to be harvested thereunder, and

(d) the area or areas within the coastal waters of Canada where the harvesting is to be carried out or where harvesting may not be carried out.

Section 34.3 permits the Governor in Council to make regulations:

(a) prohibiting, subject to the conditions of any licence issued by the Minister under section 34.2,

(i) the harvesting of marine plants or of any class of marine plants,

(ii) the harvesting of marine plants or of any class of marine plants in quantities in excess of quantities specified in the regulations, or

(iii) the harvesting of marine plants in a manner specified in the regulations,

in the coastal waters of Canada or any area or areas of the coastal waters of Canada specified in the regulations;

(b) prohibiting, notwithstanding the conditions of any licence, the harvesting of marine plants or of any class of marine plants in any area or areas of the coastal waters of Canada for such period or periods as are specified in any such regulation;

(c) requiring persons to whom licences are issued under Section 34.2 to maintain such books and records and to make such returns of information to the Minister as the Governor in Council deems necessary for the enforcement of this Act and the regulations; and

(d) prescribing the fees to be paid for licences issued under Section 34.2.

Worthy of note is subsection 34.5 which declares that none of the above proclamations "shall be construed to prevent traditional harvesting of marine plants by aborigines for their use as food".

Habitat Management

Fish habitat is defined under Section 31(5) of the Act as "spawning grounds and nursury, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes". This definition has been interpreted as including not only the water in rivers, lakes, streams and oceans, but also the total surroundings in which plants and other life forms interact to make fish life possible.

Section 31 of the Act gives DFO considerable powers to control activities on land and sea in the interest of protecting fish habitat. Section 31(1) declares that "no person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat". Section 31(2) provides for the authorization of works that may have such effects on fish habitat by the Minister, thus giving DFO the opportunity to study development proposals and order whatever changes are deemed necessary to minimize the impact.

Another important provision of the Act in this regard is contained in Section 44 which empowers the Minister to "authorize any river or other water to be set apart for the natural or artificial propagation of fish". Under this section, "fish sanctuaries" can be established to protect important breeding grounds.

Pollution Control

Section 33 of the Fisheries Act relates to the "Injury to Fishing Grounds and Pollution of Waters" and is one of the most comprehensive and effective tools for the control of pollution in the marine environment.

Subsection 33(1) declares that:

> No one shall throw overboard ballast, coal ashes, stones, or other prejudicial or deleterious substances in any river, harbour or roadstead, or in any water where fishing is carried on, or leave or deposit or cause to be thrown, left or deposited, upon the shore, beach or bank of any water or upon the beach between high and low water mark, remains of offal of fish, or of marine animals, or leave decayed or decaying fish in any net or other fishing apparatus; such remains or offal may be buried ashore, above high water mark.

In addition, subsections 33(2) and (3) state:

> (2) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water.
>
> (3) No person engaging in logging, lumbering, land clearing or other operations, shall put or knowingly permit to be put, any slash, stumps or other debris into any water frequented by fish or that flows into such water, or on the ice over either such water, or at a place from which it is likely to be carried into either such water.

Subsection (4), referred to above, permits the deposition of substances authorized by regulation.

For the purposes of this Section, a deleterious substance is defined in subsection (11) as:

(a) any subtance that, if added to any water would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, or

(b) any water that contains a substance in such qualtity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water and without limiting the generality of the foregoing includes

(c) any substance or class of substances prescribed pursuant to paragraph (12) (a),

(d) any water that contains any substance or class of substances in a quantity or concentration that is equal to or in excess of a quantity or concentration prescribed in respect of that substance or class of substances pursuant to paragraph (12) (b), and

(e) any water that has been subjected to a treatment, process or change prescribed pursuant to paragraph (12) (c).

The term "deposit" is defined as:

> any discharging, spraying, releasing, spilling, leaking, seeping, pouring, emitting, emptying, throwing, dumping or placing.

Subsection (12) referred to above permits the Governor in Council to make regulations prescribing:

(a) substances and classes of substances,

(b) quantities or concentrations of substances and classes of substances in water, and

(c) treatments, processes and changes of water for the purpose of paragraphs (c) to (e) of the definition "deleterious substance" in subsection (11).

For the purposes of enforcing Section 33, subsection 33.2(1) empowers the Minister to designate as an inspector or analyst any person who is qualified to be so designated. The powers of these inspectors are included as Appendix 3.

DFO/DOE Memorandum of Understanding

The two functions of habitat management and pollution control are very closely related and DFO and DOE have concurrent responsibilities to administer those relevant sections of the Fisheries Act. There has been a great deal of cooperation between the two departments over the past decade since a Memorandum of Understanding was signed in

1973 by the two ADM's of the Environmental Management Service and the Fisheries Service of the former Department of Fisheries and Environment. Following the creation of two separate departments in 1979, an agreement was redrafted in 1981, specific to the Maritimes, and approved by the Regional Director General of DOE and the Director Generals of DFO for both the Scotia-Fundy and Gulf Regions. In response to a Prime Ministerial directive for Section 33 to be administered by the Minister of State (Environment), the agreement was amended again in May, 1985. A copy of the new Memorandum of Understanding is provided as Appendix 4.

The Fishing and Recreational Harbours Act

Under the Fishing and Recreational Harbours Act, the Small Craft Harbours Branch of D.F.O. developes, operates and maintains a regional harbour system to accommodate the commercial fishing fleet and also to assist in the provision, maintenance and management of recreational harbours. Within the Scotia-Fundy Region there are 385 fishing and recreational harbours, the daily operations of which are managed and supervised by 60 harbour managers. The managers are appointed by the Minister and are paid a percentage of the revenue derived from the harbours.

The Small Craft Harbours Branch also administers leases, licences and agreements for the use of Crown land and facilities in or adjacent to these harbours.

The Act provides for the making of regulations that can be specific to any individual harbour for, amongst others:

i) the maintenance of order and the safety of persons and property;

ii) the control of mooring, berthing, loading and discharging of vessels;

iii) the control of pollution;

iv) prescribing the standards for the accommodation and services provided;

v) prescribing the duties or functions of persons appointed to supervise or manage any fishing or recreational harbour;

vi) prescribing terms and conditions of leases, licenses and agreements entered into or granted; and

vii) respecting the detention and safekeeping of vessels and goods seized under the Act.

A Memorandum of Understanding exists between Parks Canada and the Small Craft Harbours Branch, Gulf Region regarding the cooperative administration of "fishing industry services" located within Kouchibouguac National Park. The agreement refers to such items as the levels of maintenance, facilities provided, and funding for operation, maintenance and capital improvements, all of which were declared the responsibility of Small Craft Harbours, with the exception that Parks Canada would be responsible for the costs of those aspects or portions of developments, construction, maintenance and management that exceed Small Craft Harbours standards but which are required to meet Parks Canada facility standards and/or are required as a result of visitor use. The agreement also specified that both parties would work cooperatively in all aspects of the planning and management of the harbours "to ensure effective, long term interagency cooperation serving the objectives of fishermen, park visitors and natural resource conservation". A Joint Standing Committee was to be struck co-chaired by the Park Superintendent and the Director, Gulf Region which would meet at least twice a year, before and after the major fishing season. The agreement expressed the intention of both parties to involve the local fishermen and/or their representatives in decisions related to planning and managing the facilities. A broader public would also be involved when decisions were related to park visitor use of these areas.

The agreement also provided that berthing space for a Parks Canada boat would be available at both wharves and that Parks Canada personnel shall have unlimited access to all facilities for the purpose of carrying out their duties.

With respect to the West Isles, all the harbours and wharf facilities on Deer and Campobello islands are operated by Small Craft Harbours. There is a resident harbour master living on Deer Island.

2.3 THE DEPARTMENT OF TRANSPORT

2.3.1 The Canadian Marine Transportation Administration (CMTA)

Mandate

The Canadian Marine Transportation Administration (CMTA) carries out Transport Canada's responsibility for marine matters. Its primary role is to develop a safe and efficient national marine transportation system which contributes to the achievement of government objectives, and to operate specific elements of that system.

CMTA consists of the office of the Marine Administor, the Canadian Coast Guard, the St. Lawrence Seaway Authority, the Canada Ports Corporation, nine Harbour Commissions, more than 300 public harbours and four regional pilotage authorities.

With respect to the administration and management of national marine parks, our interest here is confined to the role and responsibilities of the Canadian Coast Guard.

2.3.2 The Canadian Coast Guard (CCG)

Organization and Responsibilities

With its headquarters in Ottawa, the CCG operates out of five regional offices in St. John's, Darmouth, Québec City, Toronto and Vancouver.

The responsibilities of the CCG can be summarized as follows:

- provide marine navigational aids and telecommunications and electronics systems;
- administer regulations related to ship safety;
- coordinate marine pollution countermeasures;
- maintain waterways and navigational aids;
- provide icebreaking and ice escort services; and,
- conduct marine search and rescue operations.

Within the CCG, the specific programs of interest to Parks Canada include Marine Search and Rescue, Marine Navigation Aids, the Navigable Waters Protection Act programs including the Receiver of Wreck, Vessel Traffic Services, Marine Pollution Prevention, and the Transportation of Dangerous Goods.

Marine Search and Rescue (SAR)

The CCG is an active partner within the national organization coordinating all SAR operations in Canada, the Interdepartmental Committee on Search and Rescue (ICSAR), chaired by the ICSAR Secretariat of DND. See Section 2.5 for further details.

Marine Navigation Aids

The Marine Aids Section of the Coast Guard is responsible for the installation, operation and maintenance of all marine navigational aids, including all buoys and lighthouses. Current projects include the changeover of the old buoyage system to the New Canadian Buoyage System, and the conversion of manned and/or battery powered lighthouses to automatic solar photovoltaic systems.

Navigable Waters Protection Act Programs

The Protection of Navigable Waters

The principle role of the Navigable Waters Protection Act (NWPA) is the protection of the public right of navigation by protecting navigable waters from structures or works that may prove to be an interference to navigation. Thus, the major program administered by this Division of the CCG is an approvals process to license structures or works in accordance with the provisions and regulations under the Act. The relevant details of the Act are discussed in Section 2.3.3. In the maritime provinces, the Act is administered by the Regional Superintendent of NWPA located in Dartmouth, N.S.

An issue of current concern to the NWPA Program is the unlicensed status of all the herring weirs and aquaculture sites in the West Isles area and the lack of coordinated administration in the permitting of such sites both with DFO and the provincial government. The recent controversy over the location of a herring weir on Popes Island in the West Isles is illustrative of what confusion and apparent inconsistency in the program of two government agencies can arise. Briefly, a weir had been located adjacent to Popes Island under a DFO permit, a decision that was later contested by the owner of the island who claimed that his only point of access to the island was obstructed by the weir. The weir was not licenced under the NWPA. Based on a complaint by the owner of the island that his right to navigate to and from the island was being interfered with, the Minister of Transport issued an order under the Act for removal of the weir. Subsequent to the removal order, the owner's title to the island became an issue; the owner of the weir also claimed that he owned the island. Attempts to reach a compromise between the two parties failed and a stalement situation developed. The Department of Justice was asked to review Transport's position vis-à-vis removal under NWPA. It was determined that the issue of ownership of the island would impair the Minister's authority to take further action under NWPA. This advice was passed to the Deputy Minister of Fisheries and Oceans. Action has now been taken to cancel the weir owner's lease for 1985, and it is understood that he has been charged under Section 22 of the Fisheries Act (time of writing, May, 1985).

Theoretically, if the NWPA approval process had been applied, this situation could have been avoided. DOT is currently working to set up an appropriate mechanism whereby an exchange of information and a systematic referral system can be established with DFO and the Crown Lands Division of the New Brunswick Department of Natural Resources (see Section 2.8.1). Neither the NWPA or the DFO licenses imply any proprietary rights over the seabed and refer only to the affect on navigation and DFO's spacing criteria for weirs (no weir may be located less than 1,000 feet from any other weir). The issuance of lot leases on the seabed is the responsibility of the Crown Lands Division (see Section 2.8.1).

The Receiver of Wreck

The Receiver of Wreck provision under Part X of the Canada Shipping Act (Wrecks, Salvage and Investigations into Shipping Casualties) is now administered by the NWPA Program of the CCG. The Receiver of Wreck appointed in the Bay of Fundy is the District Manager of the CCG base in Saint John.

There is currently some confusion regarding the legal jurisdiction over wrecks. There is a contention that wrecks form part of the seabed and, therefore, where the seabed falls under provincial jurisdiction, that the wrecks are a provincial responsibility and provincially owned. The other contention is that all wrecks are a federal responsibility and are administered by the Receiver of Wreck under the Canada Shipping Act. Parks Canada has requested legal clarification.

Part X of the Canada Shipping Act does not define what constitutes an historic wreck, but an attempt is being made to arrive at a suitable definition in the preparation of the new Maritime Code which, when completed, will replace the Canada Shipping Act.

Vessel Traffic Services

The Vessel Traffic Services section of the CCG (Aids and Waterways) has developed a Vessel Traffic Management (VTM) and Information System to ensure safe navigation within the Bay of Fundy. The Vessel Traffic Management Centre is located at the District Coast Guard Base in Saint John from which all ship masters must obtain clearance to enter the Bay of Fundy and before proceeding to or leaving from any berth (wharf, pier, dock, anchorage or mooring) within the Bay of Fundy Traffic Zone. This zone includes all of Passamaquoddy Bay.

Commercial shipping in the West Isles and Passamaquoddy Bay is a relatively minor activity, but the route is nevertheless a potentially dangerous one. The three available berths are in Eastport, Maine, and St. Andrews and Bayside in New Brunswick. All vessels must pass through Head Harbour Passage and then through Western Passage for the New Brunswick destinations.

As a result of the 1971 proposal to develop an oil refinery in Eastport, Maine, Transport Canada passed a regulation under the Canada Shipping Act to the effect that: "No oil tanker that is in the waters within Head Harbour Passage, New Brunswick, shall carry on board, as cargo or otherwise, oil in excess of 5,000 m^3" (SOR/82-244).

Marine Pollution Prevention

With respect to the prevention of marine pollution, the CCG, under the Canada Shipping Act, has primary responsibility for ship sourced pollution, marine environmental emergency contingency planning and response and controls over the routine operational discharges from vessels. Ship sourced pollution and operational discharges are controlled through the Garbage Pollution Prevention and the Oil Pollution Prevention Regulations.

Pollution Countermeasures

The CCG plays a major role within the organized federal structure for responding to marine environmental emergencies, having "the lead agency responsibility for all pollution emergencies resulting from vessels, including their equipment, cargo, fuel and stores, in waters of Canadian interest" (Transport Canada, 1977, p. 6). (The National Harbour Boards have lead agency responsibiltiy in their respective harbours). The CCG has prepared a National Marine Emergency Plan as its contribution to the national contingency plan that coordinates the activities of all agencies involved, EPS and CCG in particular.

Consistent with its lead role, the CCG has the most comprehensive inventory of special marine pollution cleanup equipment available in Canada. The Emergency structure used to deploy these resources is decentralized with each region being staffed with a Regional Manager of Emergency Operations who reports to the Regional Director General, Coast Guard. The structure is designed, in conjunction with DOE, to "develop, evaluate and acquire special emergency equipment, techniques, expertise and training required for spills of oil and noxious substances" (Transport Canada, 1977, p. 12). Emergency contingency plans are prepared at the international, regional, district and local levels.

At each CCG base, and at other strategic locations, government officers are appointed as On-Scene Commanders responsible for handling limited emergency operations within their area and resources, their duties including:

- maintenance of emergency equipment
- preparation of local contingency plans
- conduct of local emergency exercises
- liaison with local authorities.

Local plans are prepared to "cover focal points of marine activity, such as a harbour and its approaches, an area of offshore drilling, or any other sector with marine risk potential" (Transport Canada, 1977, p. 30). Local plans define the following:

i) possible points of high risk within the local area;
ii) resources and facilities available within the locality which could be used in support of an operation;
iii) a call list of officials from which the local Command Team may be staffed;

iv) a mechanism for escalation should the response required be beyond local resources (Transport Canada, 1977).

Given the differing jurisdiction amongst governments and agencies for environmental protection, the local emergency plan identifies lead and resource agency status for responding to spills depending on their type and source, and the avenues of communication to ensure coordination of effort.

This interagency coordination is achieved through the creation of Regional Environmental Emergency Teams (REETS). A REET has been established in the West Isles area with the membership of DOT, DFO, New Brunswick Environment and DOE (EPS) as chairman. A marine emergency response centre has been established at the St. Andrews Biological Station with initial response capability for local oil spills.

The Transportation of Dangerous Goods

The Transportation of Dangerous Goods Directorate within DOT is the primary agency responsible for the administration of the Transportation of Dangerous Goods Act. By a Memorandum of Understanding between DOE and DOT, the Industrial Programs Branch of EPS provides support to DOT. The details of the Act and the M.O.U. are provided in Section 2.1.3.

2.3.3 Legislation

The Navigable Waters Protection Act (NWPA)

Under the auspices of the NWPA, Part I, the CCG essentially operates an approvals process to regulate and control the construction of works in navigable waters to ensure that such works do not constitute an interference to navigation.

Part II of the Act refers to the Ministers powers to remove wrecked vessels if they constitute a hazard to navigation.

In the "Interpretation" section of the Act, "works" are defined as:

> (a) any bridge, boom, dam, wharf, dock, pier, tunnel or pipe and the approaches or other works necessary or appurtenant thereto,
>
> (b) any dumping of fill or excavation of materials from the bed of a navigable water,
>
> (c) any telegraph or power cable or wire, or
>
> (d) any structure, device or thing, whether similar in character to those referred to in this paragraph or not, that may interfere with navigation.

The essence of Part I of the Act is contai ed in Section 5:

> 5. (1) No work shall be built or placed in, upon, over, under, through or across any navigable water unless
>
> (a) the work and the site and plans thereof have been approved by the Minister upon such terms and conditions as he deems fit prior to commencement of construction;
>
> (b) the construction of the work is commenced within six months and completed within three years of the approval referred to in paragraph (a) or within such further period as the Minister may fix; and
>
> (c) the work is built, placed and maintained in accordance with the plans, the regulations and the terms and

> conditions set out in the approval referred to in paragraph (a).

It is not necessary, however, for all proposed works to obtain NWPA approval. Works which do not interfere with navigation may be approved by a Declaration of Excemption:

> (2) Except in the case of a bridge, boom, dam or causeway, this section does not apply to any work that, in the opinion of the Minister, does not interfere substantially with navigation.

Section 6 outlines the powers of the Minister to order the removal of works that required, but did not obtain NWPA approval:

> Where any work to which this Part applies is built or placed without having been approved by the Minister or is built or placed upon a site not approved by the Minister or is not built or placed in accordance with plans so approved, or having been so built or placed, is not maintained in accordance with such plans and the regulations, the Minister may
>
> (a) order the owner of the work to remove or alter the work;
>
> (b) where the owner of the work fails forthwith to comply with an order made pursuant to paragraph (a), remove and destroy the work and sell, give away or otherwise dispose of the materials contained in the work; and
>
> (c) order any person to refrain from proceeding with the construction of the work where, in the opinion of the Minister, the work interferes or would interfere

> with navigation or is being constructed contrary to this Act.

It is also possible for approvals to be granted after construction has commenced:

> The Minister may, subject to deposit and advertisement as in the case of a proposed work, approve a work and the plans and site thereof after construction has commenced and he approval has the same effect as if given prior to commencement of the construction of the work.

Section 9 provides for the repair or alteration of existing lawful works if, in the opinion of the Minister, interference with navigation is not increased. However:

> Where in the opinion of the Minister an existing lawful work has become a danger to or interference with navigation by reason of the passage of time and changing conditions in navigation of the navigable waters concerned, any rebuilding, repair or alteration of the work shall be treated in the same manner as a new work.

Section 10 of the Act empowers the Minister to make regulations regarding cost recovery and the length of time for which approvals are valid.

Part II of the Act refers to situations where wrecked vessels present a real or potential hazard to navigation. Section 13 places the o us on the vessel owner to inform the Minister of the wreck, to undertake precautionary measures and to effect the wreck's removal:

> 13. (1) Where the navigation of any navigable water over which the Parliament of Canada has jurisdiction is obstructed, impeded or rendered more difficult or

dangerous by the wreck, sinking, lying ashore or grounding of any vessel or part thereof or other thing, the owner, master or person in charge of such vessel of other thing, by which any such obstruction or obstacle is caused, shall forthwith give notice of the existence thereof to the Minister or to the collector of customs and excise at the nearest or most convenient port, and shall place and, as long as such obstruction or obstacle continues, maintain, by day, a sufficient signal, and, by night, a sufficient light to indicate the position thereof.

(2) The Minister may cause such signal and light to be placed and maintained, if the owner, master or person in charge of such vessel or other thing by which the obstruction or obstacle is caused fails or neglects so to do.

(3) The owner of such vessel or thing shall forthwith begin the removal thereof, and shall prosecute such removal diligently to completion; but nothing in this subsection shall be deemed to limit the powers of the Minister under this Act.

Section 14 empowers the Minister to have wrecks removed or destroyed in an expedient manner:

The Minister may, if, in his opinion,

(a) the navigation of any such navigable water is obstructed, impeded or rendered more difficult or dangerous by reason of the wreck, sinking, partially sinking, or lying ashore or grounding of any vessel, or of any part thereof, or of any other thing,

(b) by reason of the situation of any wreck or any

> vessel, or any part thereof, or of any other thing so lying, sunk, partially sunk, ashore or grounded, the navigation of any such navigable water is likely to be obstructed, impeded or rendered more difficult or dangerous, or
>
> (c) any vessel or part thereof, wreck or other thing cast ashore, stranded or left upon any property belonging to Her Majesty in right of Canada, is an obstacle or obstruction to such use of that property as may be required for the public purposes of Canada, cause such wreck, vessel or part thereof or other thing, if the same continues for more than twenty-four hours, to be removed or destroyed in such manner and by such means as he thinks fit,

and to dispose of same as he sees fit (Section 15):

> The Minister may cause such vessel, or its cargo, or anything causing or forming part of any such obstruction or obstacle, to be conveyed to such place as he thinks proper, and to be there sold by auction or otherwise as he deems most advisable; and the Minister may apply the proceeds of the sale to make good the expenses incurred by him in placing and maintaining any signal or light to indicate the position of the obstruction or obstacle, or in the removal, destruction or sale of the vessel, cargo or thing.

Section 16 contains the provisions for the recovery of costs incurred in the undertaking of these actions. Part II of the Act also empowers the Minister to take action toward vessels still on the surface that may impeed navigation (Section 17):

> Where a vessel has been left anchored, moored or adrift in any navigable waters in such a manner that, in the opinion of the Minister, it obstructs or is likely to obstruct navigation in such waters, the Minister may order the owner, managing owner, master or person in charge of the vessel to remove that vessel to such place as the Minister deems fit.

as well as abandoned vessels (Section 18):

> When any vessel or other thing is wrecked, sunk, partially sunk, lying ashore, or grounded in any navigable water in Canada, the vessel and its cargo and every part thereof or other thing shall be deemed to be abandoned at the expiration of two years from the date of such casualty, and thereupon the Minister, under such restrictions as to him seem fit, may authorize any person to take possession of and remove the vessel or other thing for that person's own benefit, upon giving to the owner, where known, one month's notice, and, where unknown, by public notice for a similar period in a local paper published nearest to the place of the wrecked vessel or other thing.

Section 19 and 20 of the Act also prohibit the dumping of materials into navigable waters that may pose an interference to navigation:

> 19. No person shall throw or deposit or cause, suffer or permit to be thrown or deposited any sawdust, edgings, slabs, bark or like rubbish of any description whatever that is liable to interfere with navigation in any water, any part of which is navigable or that flows into any navigable water. 1968-69, c. 15, s. 10.

> 20. No person shall throw or deposit or cause, suffer or permit to be thrown or deposited any stone, gravel, earth, cinders, ashes or other material or rubbish that is liable to sink to the bottom in any water, any part of which is navigable or that flows into any navigable water, where there are not at least twenty fathoms of water at all times, but nothing in this section shall be construed so as to permit the throwing or depositing of any substance in any part of a navigable water where such action is prohibited by or under any other Act.

In this regard, the Minister may designate certain areas where dumping could take place (Section 23):

> The Minister may appoint places in any navigable waters not within the jurisdiction of any of the officers or corporations mentioned in section 22 where stone, gravel, earth, cinders, ashes or other material may be deposited notwithstanding that the minimum depth of water at any such place may be less than twenty fathoms, and may make rules regulating the deposit of such materials.

Part III of the Act, Section 28, empowers the Minister to make regulations governing ferry cables and swing or draw bridges:

> The Governor in Council may make regulations to govern
>
> (a) the laying, stretching or maintaining of any ferry cable across, over, in or under any navigable water;
>
> (b) the maintenance of lights and nay other precautions for the safety of navigation in connection with any such ferry cable;

(c) the opening and closing of any swing or draw bridge over any navigable water; and

(d) the maintenance of lights and any other precautions for the safety of navigation in connection with such bridge.

The Canada Shipping Act

The Canada Shipping Act is DOT's primary legislative mandate for undertaking its programs relating to all matters of marine transportation in Canada, including ship sourced pollution, emergency planning and response, approvals and controls over operational discharge, containment of dangerous goods, marine cargo handling, terminal design, ship inspections, boating safety, and vessel traffic services.

The Act is organized into 21 parts outlining DOT's responsibilities:

Part I - Recording, Registering and Licensing (of vessels)
Part II - Certificates of Officers
Part III - Seamen
Part IV - Provisions as to Relief and Repatriation of Distressed Seamen and Seamen Left Behind Abroad
Part V - Sick Mariners and Marine Hospitals
Part VI - Pilotage
Part VII - Great Lakes Pilotage
Part VIII - Safety
Part IX - Pollution of the Water and Air
Part X - Wrecks, Salvage and Investigations into Shipping Casualties

Part XI - Lighthouses, Buoys and Beacons and Sable Island
Part XII - Public Harbours and Harbour Masters
Part XIII - Port Wardens
Part XIV - Navigation - Collisions - Limitation of Liability
Part XV - Coasting Trade of Canada
Part XVI - Delivery of Goods
Part XVII - Legal Proceedings
Part XVIII - Supplemental
Part XIX - Fatal Accident
Part XX - Pollution
Part XXI - Operation

The numerous provisions of the Act are implemented through equally numerous regulations passed under the Act, the Master Index for which is included as Appendix 5. Those of immediate interest are reviewed below.

The Boating Restriction Regulations

As with all regulations under the Act, the Boating Restriction Regulations do apply to marine waters within Canada's territorial sea, as the definition of "Canada Waters" under the Act "means the territorial sea of Canada and all internal waters of Canada". This point is raised at the outset since virtually every application of these regulations has been in reference to internal waters. The few marine references found in the amended Schedule to the regulations are all located off the west coast of B.C. In addition to three applications in the vicinity of Victoria (Oak Bay, Brentwood Bay, and North Saanich) to control boating speed, there are two other applications of particular interest. In Howe Sound, north of Vancouver, the regulations have been applied to prohibit all power vessels from the waters extending out 300 metres from the shoreline within Porteau Cove Provincial Park. This park is an extensively developed recreation park with specialized facilities to cater to SCUBA divers, including a deliberately sunken wreck, diver's floats, and artificial tire and concrete reefs. The other reference is in Pendrell Sound adjacent to East Redonda Island in the Strait of Georgia. This application restricts boating speed to 4 mph. in the waters near the 6,200 hectare East Redonda Island Ecological Reserve.

The Regulations have been applied in only five provinces in Canada with which DOT has verbal agreements (these are not formal agreements): B.C., Alberta, Manitoba, Ontario, and Nova Scotia. In each province, a resource related department has been "delegated" the responsibility for administering and enforcing the Regulations. DOT does not participate in the enforcement of these regulations. There is no such agreement with New Brunswick, no designated provincial agency, nor have the Regulations ever been applied there. Parks Canada would deal directly with DOT to establish designated areas under these Regulations.

The regulations are intended to enable the control of boating activities in a designated area by placing restrictions on boating speed, the type and power of propulsion, or by prohibiting boating of any kind altogether. Section 9 of the regulations describes the figures to be displayed on authorized signs indicating the following prohibitions:

(a) "no vessel of any kind shall be operated on the waters in respect of which this sign has been placed";

(b) "no power-driven vessel shall be operated on the waters in respect of which this sign has been placed";

(c) "no power-driven vessel, other than a vessel driven by a battery-powered electric propulsion motor, shall be operated on the waters in respect of which this sign has been placed";

(d) "no power-driven vessel shall be operated for the purpose of towing a person on water skis, a surf board or any other such equipment on the waters in respect of which this sign has been placed";

(e) "no power-driven vessel shall be operated at a speed that would cause that vessel to create a wash that would submerge the bottom of the limit bar";

(f) "no power-driven vessel shall be operated at a speed in kilometres per hour over the ground in excess of the number shown on the waters in respect of which this sign has been placed"; and

(g) "no power-driven vessel that has an engine power in kilowatts greater than the number shown shall be operated on the waters in respect of which this sign has been placed".

Section 3, 4 and 5 prohibit the illegal placement of, damage to or removal of the signs identifying the designated areas. Section 6 requires that all boaters comply with the restrictions as indicated by the signs, with Section 7 providing the exceptions for peace officers, government employees doing their duty, or for the purposes of preventing injury, loss of life or property damage.

Section 11 empowers the Minister to appoint "any employee of the federal government or of a provincial, county or municipal government as a peace officer for the purpose of these Regulations". Section 12 defines the powers of peace officers:

> 12. (1) A peace officer may question any person respecting any contravention or suspected contravention of these Regulations and may go on board any vessel for that purpose.
>
> (2) The owner of a vessel boarded pursuant to subsection (1) and every person found on board the vessel shall give a peace officer all reasonable assistance in his power to enable the peace officer to carry out his duties and functions under these Regulations and shall furnish the peace officer with such information as he may reasonably require.
>
> 13. (1) In order to promote safety, a peace officer may direct or prohibit the movements of any vessel, but in the case of a vessel in a public harbour for which a harbour master has been appointed, the peace officer shall obtain the consent of the harbour master before so directing or prohibiting.
>
> (2) Notwithstanding subsection (1), in an emergency a peace officer may direct or prohibit the movements of any vessel in a public harbour without the prior consent of the harbour master.

The Small Vessel Regulations

These regulations basically outline the requirements for safety equipment standards, licensing, marking of vessels, precautions against fire, and references to navigation lights and sound signalling apparatus.

Peace officers can be appointed to enforce the regulations and may include any federal, provincial or municipal official as a peace officer, whose powers include the following:

> 71. A peace officer may, to the extent that it is necessary in connection with the enforcement of these Regulations, go on board any vessel and make such examination of the vessel and its equipment as he deems fit and may ask any pertinent questions of, and demand all reasonable assistance from, the owner or master or any person in charge or appearing to be in charge of the vessel.
>
> 72. A peace officer may order detention of a vessel and may take action by other reasonable and appropriate means at his disposal to prevent violation of Parts II, IV and V.
>
> 73. A peace officer may, in order to promote safety, direct the movement of vessels but, except in an emergency, no such directions shall be given in respect of vessels in a public harbour for which a harbour master is appointed without the prior consent of the harbour master.

The Collison Rgulations

These regulations outline the requirements in the event of collisions between vessels and for vessel lighting, fog signalling and manoeuvering, steering and sailing rules and other general rules.

2.4 THE DEPARTMENT OF ENERGY, MINES AND RESOURCES (COGLA)

The Canadian Oil and Gas Lands Administration (COGLA) was established in 1982 to manage oil and gas activity on Canada Lands. In the north, these lands encompass 6.4 million square kilometres in the Yukon, Northwest Territories and the marine waters north of 60°, and are administered by COGLA, Department of Indian and Northern Affairs. In southern Canada, approximately 3.8 million square kilometres of area off the east and west coasts are administered by COGLA, Department of Energy, Mines and Resources.

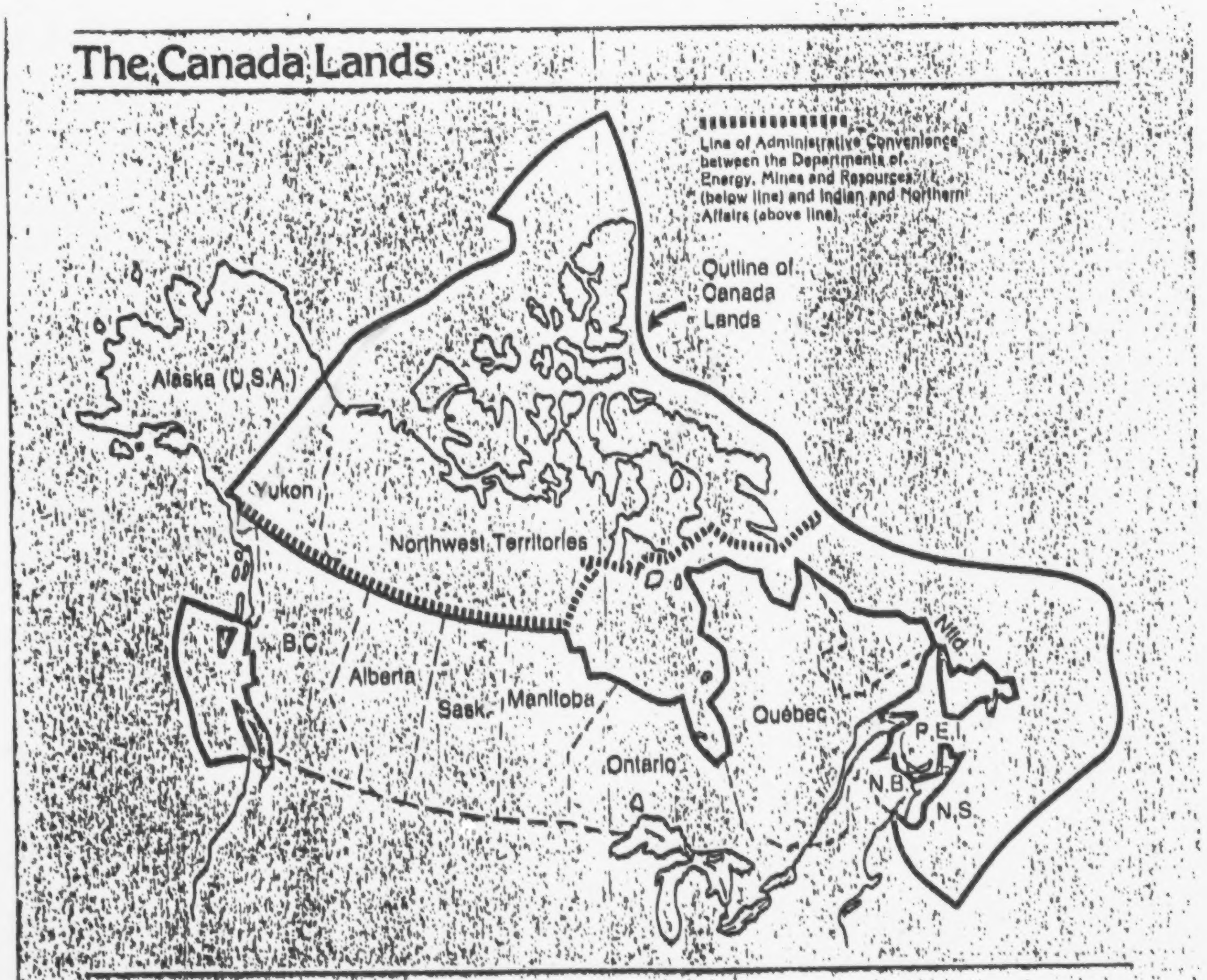
In its administration of the Canada Oil and Gas Act, 1982, COGLA's responsibilities include regulations governing safety, conservation of resources and protection of the environment. The Act defines Canada Lands in southern Canada as:

> "...those submarine areas, not within a province, adjacent to the coast of Canada and extending throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is the greater." (S. 2(1)).

As can be seen from the map of Canada Lands on Figure 1, this definition excludes the Bay of Fundy, since these waters are considered to be within the provinces of Nova Scotia and New Brunswick for the purposes of this Act.

COGLA, then, has no jurisdiction in the Bay of Fundy. However, in the case of Nova Scotia, the governments of Canada and Nova Scotia signed an agreement in March, 1982

Figure 1: Map of Canada Lands


The Canada Lands
Line of Administrative Convenience between the Departments of Energy, Mines and Resources (below line) and Indian and Northern Affairs (above line)
Outline of Canada Lands
Alaska (U.S.A.)
Yukon
Northwest Territories
B.C.
Alberta
Sask.
Manitoba
Ontario
Québec
Nfld.
P.E.I.
N.B.
N.S.

creating the Canada-Nova Scotia Offshore Oil and Gas Board. The agreement has no bearing on any issues regarding ownership or jurisdictional rights of either government in the offshore, but provides for the joint management of resource development.

No such agreement has been signed with the government of New Brunswick and the jurisdiction over offshore oil and gas activity remains with the provincial Department of Natural Resources, Mineral Resources Division (see Section 2.8.1).

A good working relationship has developed between COGLA and DOE, primarily through EPS, with their membership on COGLA's Resource Management Environmental Committee (RMEC). Parks Canada is also a member of this committee. COGLA appears quite cognizant of its responsibilities to ensure that the development of oil and gas is conducted in the interest of human safety, environmental protection and resource conservation, as well as economic and social development. To minimize future potential conflicts, an ad hoc Working Group has been established under the RMEC to identify environmentally sensitive areas on, near or adjacent to Canada Lands, particularly in coastal marine environments. Parks Canada has already made a substantive contribution to this exercise. It is COGLA's intent to consult with its Working Group members on a regular basis to ensure that potential marine park areas are given careful consideration in the negotiations of exploration agreements. This intent has already been demonstrated in the case of Forillon National Park, where four crown reserve areas adjacent to the Park were withdrawn prior to calling for proposals to explore the north-west portion of the Gulf of St. Lawrence.

Since the West Isles area is located very close to the Canada Lands boundary across the mouth of the Bay of Fundy, it would appear safe to assume that the presence of a national marine park would be duly considered by COGLA in its negotiations for any future exploration or development agreements in this area.

2.5 THE DEPARTMENT OF NATIONAL DEFENCE (DND)

In addition to DND's role, pursuant to the Defence Act, in operating the Canadian Armed Forces and all other matters relating to national defence, it is also responsible for coordinating all Search and Rescue activities in Canada and its adjacent oceans. The following outlines the roles, responsibilities and organizational structure of Search and Rescue (SAR) activities in the marine environment of Canada.

2.5.1 Interdepartmental Committee on Search and Rescue (ICSAR)

The Interdepartmental Committee On Search and Rescue (ICSAR) was formed in response to government direction in November 1976, to provide interdepartmental co-ordination and advice to Ministers in the areas of Search and Rescue (SAR) policy, planning, resources and effectiveness. ICSAR consists of representatives of DND, Canadian Air Transport Administration (CATA), CCG, DFO, Department of Energy, Mines and Resources (EMR), Canadian Oil and Gas Lands Administration (COGLA), Department of Indian and Northern Affairs (DINA), Environment Canada/Atmospheric Environment Services (EC/AES) and the Royal Canadian Mounted Police (RCMP). ICSAR is chaired by a senior officer of DND and CCG provides the vice-chairman. ICSAR is responsible for the annual review of SAR needs, services and performance and for the preparation of plans, recommendations and reports for consideration by the Committee on Priorities and Planning. Once approved, national policy, standards and procedures are promulgated by ICSAR through the departmental SAR organizations.

The focal points, or nerve centres, of the SAR organization are four Rescue Coordination Centres (RCC's), located in Halifax, N.S., Trenton, Ont., Edmonton, Alta, and Victoria, B.C. These centres are staffed 24 hours a day by Canadian Armed Forces and Canadian Coast Guard personnel to initiate and coordinate SAR operations. Here, for example, the movements of search aircraft and rescue helicopters of the CAF are coordinated with the vessels of the CCG, the patrol ships of DFO and secondary SAR resources and vessels of opportunity to locate and rescue lost or disabled mariners and aviators.

In addition to the RCC's, the Coast Guard also operates two Marine Rescue Sub-Centres (MRSC's), which function like RCC's, in Quebec City and St. John's, Nfld. Working together, these centres provide a fast response to local emergency situations.

With respect to marine SAR, the Coast Guard is the major actor. The CCG fleet of vessels provides full time SAR marine craft of different sizes and types at numerous locations in Canada. However, while the Coast Guard does have a base in the Saint John harbour, there are no full time primary SAR resources operating in the Bay of Fundy, with the exception of one boat based in Westport, Nova Scotia. There are secondary SAR CCG vessels based in Saint John whose primary role is aids navigation work but they are available for SAR response if required (pers. comm., Mr. R. Stright, CCG, Halifax, Nov. 5, 1984). There is also one helicopter available as a secondary SAR resource.

DFO operates a large fleet of fisheries patrol, research and survey ships, a number of which are also available as secondary SAR resources and are "multi-tasked" for SAR operations. In the West Isles area, there are such vessels based on Grand Manan, and to a lesser extent, the St. Andrews Biological Station. On Grand Manan, there are two vessels. The "Cumella", is a 76 foot wooden patrol vessel, based at

North Head, Grand Manan, and is double crewed (with PY assistance from the Coast Guard) and multi-tasked to provide for 24 hour SAR service. It currently handles 35-40 SAR incidents/year and also carries out surveillance and regulation enforcement work.

The "Bouctouche Light" is a 45 foot craft with a 2 man crew designed for inshore day work, operating out of Seal Cove, Grand Manan. While more limited for SAR work, it handles about 15 SAR incidents per year.

In St. Andrews, the 65 foot, 4 man "J.L. Hart" is a fisheries research vessel available for day work only, although it could respond to local SAR calls if necessary (pers. comm., Earl Wagner, Superintendent of Ships, Scotia Fundy Region, DFO, Oct. 31, 1984).

The CCG also operates a Canadian Marine Rescue Auxilliary (CMRA) where private boat owners enter into an agreement with CCG to provide voluntary SAR services when called upon. There are 5 such vessels based in St. Andrews and 4 in Leonardville, Deer Island.

These vessels would be available to respond to SAR calls in the West Isles area.

2.6 THE DEPARTMENT OF EXTERNAL AFFAIRS

2.6.1 The International Joint Commission (IJC)

The International St. Croix River Board of Control

Operating under the auspicies of and reporting to the IJC, the International St. Croix River Board of Control (SCRBC), created in 1915, is responsible for the control of pollution and water levels in the boundary waters of the St. Croix River. Pursuant to Orders of Approval issued by the IJC for works or development that may impact upon water quality or quantity, it is the task of the SCRBC to ensure that such works or developments operate or occur in accordance with the conditions of the Orders. The Board consists of one Canadian and one U.S. member.

To assist the Board in carrying out its duties, the Advisory Board on Pollution Control - St. Croix River was formed. This Board can undertake studies to inventory and monitor sources of pollution and to recommend programs of pollution abatement necessary to achieve the Water Quality Objectives of the IJC for the St. Croix River. Improvement measures are undertaken by the respective Canadian or U.S. authority. The Canadian membership on this Board includes DFO (St. Andrews Biological Station), DOE (EPS) and New Brunswick Environment.

The area of interest to the Board includes the St. Croix River Basin and does not extend into the marine waters of Passamaquoddy Bay. However, the water quality of the river will obviously have an impact on the waters of the Bay.

2.7 SOLICITOR GENERAL (RCMP)

The Royal Canadian Mounted Police (RCMP) could play an important role in assisting other authorities in the enforcement of regulations pertinent to national marine park management (eg. under the National Parks Act, Canada Shipping Act, Fisheries Act), as well as those regulations within the regular limits of their responsibilities, both within and surrounding the park (eg. under the Criminal Code or provincial legislation). The inception of the New Brunswick Highway Patrol in southwestern New Brunswick in August, 1985, will relieve the RCMP of those related duties.

In southwestern New Brunswick, there are RCMP detachments in St. George, St. Andrews and St. Stephen with a full time sub-detachment on Campobello Island. Past attempts to establish a sub-detachment on Deer Island have not been successful due to housing difficulties, however, the attempt is continuing. Currently, one officer is posted full time on Deer Island during the summer months. Should a national marine park be established, "the park and its associated tourism activity would entail increased vigilence of facilities and patrolling of roads ... Discussions with the RCMP indicate that with the park, an officer will be needed full time on Deer Island ... and the existing service on Campobello will be adequate". (D.P.A. Consulting Ltd., 1985). The existing service in St. Andrews would also be adequate.

The Federal Enforcement Section of the RCMP is currently authorized to enforce federal regulations under, for example, the Migratory Birds Convention Act, the Fisheries Act and the Canada Shipping Act. The marine capability of the detachment is, however, quite limited. While the RCMP used to have a marine division, this is no longer in place. There is currently a 23 foot craft based on Frederiction that is designed for inland water work. The Saint John detachment may acquire a Boston Whaler in the near future for marine work, and the West Isles area would likely be included in the area to be patrolled by this craft. (pers. comm., Corporal W. Hiscock, RCMP, Fredericton, N.B.).

2.8 THE PROVINCE OF NEW BRUNSWICK

Within the context of national marine park management, the programs, and enabling legislation, of six provincial government departments will have some influence, either direct or indirect, on Parks Canada's operations: the Departments of Natural Resources, Fisheries, Environment, Municipal Affairs, Tourism and Historical and Cultural Resources.

2.8.1 Department of Natural Resources

Given the extent of provincial jurisdication in the Bay of Fundy, the Department of Natural Resources has a significant role to play in the management of the marine environment. Since the definition of "Crown Lands" extends to the foreshore and beyond to include the seabed to the provincial boundary in the middle of the Bay of Fundy, and the waters above and below these lands, the Minister of Natural Resources has authority over the exploration for and development of minerals and oil and gas, and the leasing of rights to use Crown Lands for wharves, aquaculture sites, lobster pounds and herring weirs. The Minister also enjoys some authority over fish and wildlife resources, notwithstanding the recognized areas of federal jurisdiction.

Within the Department, the above responsibilities are administered by the Mineral Resources, Crown Lands and Fish and Wildlife Divisions respectively.

Mineral Resources Division

The Mineral Resources Division administers the exploration for and development of both minerals and oil and gas under the auspicies of the Mining Act (Chpt. M14, R.S.N.B. 1982) and the Oil and Natural Gas Act (Chpt. 02.1, R.S.N.B., 1976). With respect to the marine environment, offshore mineral rights can be leased under the Mining Act and there are provisions in the Act for seabed mining.

The Oil and Natural Gas Act also provides for the offshore exploration of oil and natural gas, and licences to search can be issued for periods of up to 10 years. If exploratory efforts are successful, production leases can also be issued.

Two exploration wells have been drilled in the Bay of Fundy, the first being in 1975 at a point midway between Black's Harbour and Grand Manan, near the Wolves Islands, but it proved to be dry. A second well was drilled off Cape Spencer in 1983 and it was also dry.

There are currently no environmental regulations under the Oil and Natural Gas Act, although the operations of the latter well were inspected in cooperation with COGLA inspection officers using COGLA's environmental standards.

The Mineral Resources Division also administers the Quarriable Substances Act (Chpt. Q1, R.S.N.B., 1968) which, with respect to the marine environment, refers to shore areas. Under Section 1 of the Act, shore areas are defined as:

> "...that portion of land lying within three hundred meters above and three hundred meters below the ordinary high water mark of any pond, lake, river or body of water and includes any bed, bank, beach, shore, dune, bar, flat or mud flat lying in that portion of land."

In 1975, the Minister of Natural Resources was given approval by the Lieutenant-Governor in Council to designate all marine coastlines or shorelines in the Province as "shore areas". A policy statement on Quarry Permits in shore areas was issued in March, 1975 to the effect that "...no quarriable substances (sand, gravel, clay, mud, shale, building stone, peat, peatmoss, etc.) may be removed from designated shore areas".

All of the shoreline of Passamaquoddy Bay, including all its islands, have been so designated. This policy applies to both privately owned and Crown Lands (Kingston, 1975).

Crown Lands Division

The major responsibility of this Division is the administration of the Crown Lands and Forests Act (Chpt. C-38.1, R.S.N.B., 1980). In addition to providing for the management of surface Crown Lands and forests, it also administers the coastal foreshore (i.e. from high to low water marks) and the seabed out to the provincial boundary in the middle of the Bay of Fundy. The province of New Brunswick has claimed sole jurisdiction of seabed resources based on the original territory assigned to the province of Nova Scotia (of which New Brunswick was a part) and as assigned to each province subsequent to their separation in 1784 (pers. comm., Crown Lands Division, Oct. 18, 1984).

Under the Crown Lands and Forests Act, "Crown Lands" are defined as "all or any part of the lands vested in the Crown that are under the administration and control of the Minister and includes any water upon or under the surface of such lands" (Sec. 1). Wildsmith (1982) has interpreted this to include subaquatic lands. The Act authorizes the Minister to lease Crown Lands for a period not to exceed 10 years.

The Crown Lands Division now exercises this authority over subaquatic lands by issuing leases for lobster pounds. A lease from the province must be obtained before Crown Lands can be used for lobster pounds. In order for a lease to be issued, the applicant must secure the permission of the adjacent land owner in order to ensure that the landowners rights of marine access to the property are not threatened.

It is recognized that a permit must be obtained from DOT under the Navigable Waters Protection Act before the leased area can be occupied. Before the leases are issued, there is an established referral process to DOT-NWPA in Saint John, DOE (EPS) in Halifax and DFO in St. Andrews.

This Act also gives the Department of Natural Resources the authority to licence, or provide leases for, the construction of wharves, and will soon be extended to include aquaculture sites, herring weirs, and rearing plots for oysters and mussels. The Crown Lands Division is now preparing a new regulation that will encompass the administration of all commercial leases on Crown Lands including those mentioned above (pers. comm., Mr. T. Sifton, Dir., Crown Lands Division, Oct. 19, 1984). This action was precipitated by recently held interdepartmental discussions, including N.B. Crown Lands, DFO and DOT, regarding the complexity and uncertainties of licencing such activities, especially aquaculture which is not covered by the Fisheries Act. It was also recognized that neither the DOT permit under the Navigable Waters Protection Act (which solely authorizes the structure from the point of view of not being a hindrance to navigation), nor the DFO licence for weirs (which licences the site of the weir with regard to its location in respect to other weirs for fisheries management purposes), imply any proprietory rights to the seabed or the water column above it. It is also recognized that none of the existing weirs, in fact, have been authorized by permit under the Navigable Waters Protection Act.

This measure should, over time, serve to simplify the administration of these activities and formally legitimize existing as well as future operations. While the province is taking a lead agency role in these matters, this does not necessarily imply federal/provincial agreement on their respective jurisdictions. It should, however, work to eliminate uncertainties and such controversies as the ongoing case at Popes Island (see page 49).

Fish and Wildlife Division

This Division administers New Brunswick's new Fish and Wildlife Act (Chpt. 14, R.S.N.B.), which authorizes the Minister to undertake programs for the management of terrestrial wildlife and inland fresh water sport fisheries.

This Act is of little relevance to national marine park management, with the exception of the fact that a new amendment to the hunting regulations under the Act permits the shooting of cormorants if, for example, they are causing a problem for commercial fishermen.

2.8.2 Department of Fisheries

The Department of Fisheries is the principal provincial agency with a management role in the marine fishery. Its programs are derived from four pieces of legislation that it administers:

i) The New Brunswick Fisheries Development Act established the New Brunswick Fisheries Development Board and authorizes the Minister to provide financial assistance, primarily for fishermen training and vessel construction, to aid and encourage the establishment or development of fisheries in the Province.

ii) The Fish Inspection Act empowers the Minister to issue licences for buying and selling or processing fish and to inspect fish products to ensure they are fit for human consumption.

iii) The Irish Moss Act authorizes the Minister to issue licences to harvest Irish Moss around the coast of the Province.

iv) The Fish Processing Act empowers the Minister to issue licences for the purpose of establishing, operating and maintaining a processing plant.

The role of the provincial fisheries agency, then, is primarily one of the training of fishermen, the financing of vessel construction, the economic development of the fishing sector, and the protection of the consumer of fishery products (pers. comm., Henri Légaré, A.D.M., Dept. of Fisheries, Jan. 25, 1984).

2.8.3 Department of Environment

The N.B. Department of Environment administers the Clean Environment Act (Chpt. 3, R.S.N.B., 1971) which controls all waters within the confines of the province. With respect to water management, it permits most of the measures necessary for developing and administering a comprehensive water resource program, including the establishment of regulations necessary for the control and abatment of pollution.

While the Act does refer primarily to inland fresh waters, the Act's definition of "water" does include coastal waters. It would appear that if the prevention problem is land based and affects coastal waters it is clearly under provincial jurisdiction, but not to the exclusion of federal jurisdiction as it relates to the pollution of coastal waters. In situations such as this, the abatement and control of pollution problems becomes a joint provincial/ federal venture (pers. comm., Pollution Control Br., Oct. 18, 1984).

The Act is administered by the Pollution Control Branch of the Department and its pollution control provisions are implemented primarily through its Water Quality Regulations.

2.8.4 Department of Municipal Affairs

The county system of government was abolished in New Brunswick in 1967. Subsequently, a new Community Planning Act was passed which came into effect in 1973. The Act calls for the division of the province into seven planning regions, each of which contain a number of municipalities and unincorporated territories that can be combined to form planning districts.

The Act also calls for the adoption by the province of a plan for each region that will set general policies and programs for the orderly economic, social and physical development of the region. The purpose of a regional plan is to coordinate development within the region and to provide a framework within which municipalities may plan their own future development. The regional plan is developed by the Community Planning Branch.

The responsibility for controlling land use within a municipality will rest with the municipal government. The new act will encourage, and in some cases, require municipalities to adopt plans respecting their future development. Such plans must be consistent with the regional plan affecting that municipality. The Community Planning Act establishes several advisory bodies: a District Planning Commission, an Advisory Committee for municipalites not in a District Planning Commission, and a Provincial Planning Committee.

Once a district has been established for the purposes of regional planning, then the planning commission can be established. The commission is the community planning advisory body for all municipalities in the district and for the Minister of Municipal Affairs in relation to unincorporated areas in the district. At the same time the commission carries out other roles in the various jurisdictions as well. If it has a planning director, the commission can prepare a municipal or area plan, a basic planning statement and a development or urban renewal scheme for a municipality in the district or for the Minister in respect of an unincorporated area in the district.

In the area of Passamaquoddy Bay, the towns of St. Stephen, St. Andrews and St. George, and the village of Blacks Harbour, are designated municipalities. St. George is the only one lacking a municipal development plan and a zoning by-law.

Both Deer Island and Campobello Island, and the adjacent archipelago, are unincorporated areas and as such are almost totally lacking in any land use controls. The only exceptions are the Roosevelt-Campobello International Park Designated Areas Regulation (O.C.76-954), a provincial regulation that controls land use in two designated areas adjacent to the park, and the Provincial Subdivision Regulation that applies when a proposed subdivision of land does not abut a public steet. The only other stipulations that apply are under the provincial housing regulations whereby a minimum lot size of 1 acre is necessary for septic tank installation and new homes must be built with access to public roads.

In order to institute land use planning controls on Deer and Campobello Islands and unincorporated areas on the mainland, 3 options are available: 1) a planning district can be established including all these areas and the municipalities, possibly to include the entire shoreline of Passamaquoddy Bay from St. Stephen to Blacks Harbour; 2) individual area plans could be developed for sectors of the mainland and Campobello and Deer Islands; and 3) create individual municipalities on Deer and Campobello Islands and either 1 or 2 above for the mainland. Each optional planning instrument can implement its land use policies through zoning by-laws, enforced either by the municipalities or in the case of unincorporated areas, by Municipal Affairs' Development Officers. Municipal Affairs is currently preparing area plans for the area outside St. Andrews in the vicinity of Minister's Island and Chamcook Bay.

Local Service Districts (LSDs) are special service advisory committees with members elected by the local community. They are primarily oriented towards arranging the provision of special services to their community such as fire protection, ambulance service and garbage collection. The LSDs can also advise the Minister on planning matters and are eligible for grants from the Department to assist them in performing their duties. LSDs have been formed on both Deer and Campobello Islands.

2.8.5. Department of Tourism

The Department of Tourism (Tourism New Brunswick) has as its overriding mission: To assist and encourage the orderly development of the provincial tourism industry and to provide a system of provincial parks; for the economic and social benefits of New Brunswick citizens.

Its specific goals include the following:

- To derive the maximum in economic benefits from the tourist industry by the creation of employment and income opportunities for the people of New Brunswick.

- To enhance and assist in maintaining and perserving the natural and cultural heritage of the Province for the social benefit for both residents of the Province and non-resident visitors.

- To provide certain outdoor recreation opportunities in sufficient quantity and quality primarily for residents of the Province and for others who wish to use them.

The authority to implement the various programs of the Department derives primarily from the Tourism Development Act and the Parks Act.

The Tourism Development Act and its regulations set out the means by which the Department operates with respect to accommodation, other establishments, and information centres. Section 3 of the Act charges the Minister to "promote the development of the tourist industry and public parks in the Province" (Section 3(a)) and more specifically to:

(a.1) promote the development of the handcraft industry in the Province,

(b) organize and maintain tourist information centres in the Province and elsewhere,

(c) encourage and promote improvement in standards of accommodation, facilities, attractions and services offered to the public,

(d) promote, regulate and control tourist establishments offering services to the public,

(e) at any tourist establishmen developed under section 4 construct and operate toilet, dressing-room, picnic, camping, cooking, bathing, parking and other facilities for the convenience of the public, and

(f) at any tourist estalbishment developed under section 4 construct or cause to be operated restaurants, refreshment booths, shops, and other facilities for the convenience of the public.

The Act also enables the Minister to "purchase, hold, or acquire ny land, whether or not covered with water, for the purpose of development as a tourist establishment" (Section 4.(a)) and "to enter into ... cost sharing agreements with other governments, government agencies, and persons for the purpose of promoting the tourist industry (Section 4(b)).

In August, 1982, the department published A Tourism Sector Strategy for New Brunswick (Tourism New Brunswick, 1982) intended to provide guidence for the coordinated development of the tourism industry for the province by both government and the private sector. Specifically, the strategy examines opportunities and problems and makes recommendations for tourism industry development in New Brunswick to 1986. In the preparation of the strategy, the creation of productive jobs and increased incomes was given the highest priority.

The strategy firmly endorsed the concept of tourism destination areas as being "fundamental to the successful realization of provincial development opportunities which will provide jobs and incomes for provincial resisdent". (Tourism New Brunswick, 1982, p. 5-8). Tourism destination areas were identified on the basis of their high level of present development or future potential and where continued tourism development is most likely to occur. An area known as the Fundy Isles, which includes the West Isles and St. Andrews, as well as Grand Manan, was identified as a tourism destination area. With respect to this area, the strategy made a specific recommendation:

> "A marine national park in the Fundy Isles area scores highly in regards to location, compatability with image, and significance. Depending on support for such a concept from the local residents, the Province should activity pursue this concept with Parks Canada."
> (p. 7-12)

With respect to provincial parks, the Parks Act authorizes the creation, management and operation of a provincial park system. Under the Act, "all provincial parks are dedicated to the people of the Province and others who may use them for their healthful enjoyment and education, and ... the provincial parks shall be maintained for the benefit of future generations in accordance with this Act and regulations". (Section 2).

There are three provincial parks in the vicinity of the West Isles, all of which provide day use and camping opportunities: Herring Cove on Campobello Island, and Oak Bay and New River Beach on the mainland.

2.8.6 Department of Historical and Cultural Resources

The programs of the department that are of interest to Parks Canada operate under the auspicies of the Historic Sites Protection Act which outlines the legislative provisions for the protection of historic and archaeological resources. Under Section 2 of the Act, "the Minister may designate any sites, parcel of land, building or structure of any kind to be an historic or anthropological site ..." (Section 2(1)) and may designate any such site as a protected sites (Section 2(2)). Under Section 2(3)), the Minister may also "designate a group or collection of buildings and their environs, in urban or rural areas, that are considered to be of historic or architectural significance as an historic district".

These sites may be designated on Crown land or on privately held lands:

> 2.1(1) Any easement or covenant entered into by the Minister with respect to an historic site or any easement or covenant approved in writing by the Minister entered into by any other person with respect to an

> historic site may be registered against the real property affected in the proper registry office.
>
> 2.1(2) Where an easement or covenant is registered against real property pursuant to subsection (1), such easement or covenant shall run with the real property and the Minister or the person referred to in subsection (1), as the case may be, amy enforce such easement or covenant, whether positive or negative in nature, against the owner or any subsequent owners of the real property and the Minister or the person referred to in subsection (1), as the case may be, may enforce such easement or covenant even where he owns no other land which would be accommodated or benefitted by such easement or covenant.
>
> 2.1(3) Any easement or covenant entered into pursuant to subsection (1) may be assigned to any person and such easement or covenant shall continue to run with the real property, and the assignee may enforce the easement or covenant as if he were the Minister or the person referred to in subsection (1), as the case may be, even if he owned no other land which would be accommodated or benefitted by such easement or covenant. 1977, c.27, s.1; 1982, c.3, s.35

This legislation can also be applied to shipwrecks, as is the case with the Girourd Shipwreck Site which has protected status.

This program is administered by the Historic Sites Branch and the Archaeology Branch, in cooperation with the New Brunswick Museum. In the case of the former, its primary role is the preservation of New Brunswick's built heritage. It works toward this end by two means:

- 1) acquiring and developing the best examples of architectural styles from the various periods and cultures and exhibiting them to the public as operating historic sites and by;

  2) encouraging and assisting local historical societies, civic trusts, other government agencies and the private sector to acquire and adapt historic structures to useful purposes and thereby ensure their preservation.

The Branch places much of its emphasis on the latter, assisting local groups with acquisition, employment, technical and financial assistance. These groups consist primarily of local museums, historical societies and heritage trusts.

Some projects are also undertaken by the province. One of interest includes the restoration of the Doak Estate in Doaktown in cooperation with the Central Miramichi Historical Society. This project includes an agreement with a local farmer "to cultivate the agricultural land of the site and to pasture animals in fields adjacent to the buildings to better portray the site as it was in the past" (Department of Historical and Cultural Resources, New Brunswick, 1984, p. 19). This approach has considerable potential for application in the fishing industry of the West Isles, and for the protection and restoration of, for example, the Chaffey Estate on Indian Island.

The Archaeology Branch, in cooperation with the New Brunswick Provincial Museum, conducts research on the human past of New Brunswick. One such project is now ongoing in the West Isles in conjunction with the Maritime Committee for Archaeological Cooperation of the Council of Maritime Premiers.

The Department also operates an Historic Villages program, the objective of which is to promote an appreciation and understanding of New Brunswick history. The Kings Landing development is one such village under this program. The concept of an historic fisheries village in the West Isles has been raised in the past, and is being considered as part of a regional tourism development plan in the Fundy Isles area.

2.9 SUMMARY

This section has attempted to identify and describe the various agencies, both federal and provincial, involved in marine environmental management, their enabling legislation and respective programs. This information is summarized in tabular form in Tables 1 and 2.

Clearly, some agencies are more involved than others in the marine environment, and their extent of involvement in national marine park management should remain at similar relative levels. The participation of the International Joint Commission or the provincial Fish and Wildlife Division, for example, would be essentially peripheral in extent. Other agencies such as DND would only become involved in specific instances and only through their cooperation with other agencies such as DOT or DFO. Further, other agencies, such as DOE (EPS), would actively practice certain aspects of their mandate (i.e. Section 33 of the Fisheries Act) whereas other aspects (i.e. the Clean Air Act) are not of immediate relevance.

Nevertheless, they are all discussed here, to one extent or another, to provide the holistic perspective. To further simplify the scenario, however, it is clear that certain agencies stand out as being key to a successful national marine park management program:

DOE:	Parks Canada
DFO:	Fisheries Operations Branch Fisheries Research Branch
DOT:	Canadian Coast Guard

A cooperative administrative structure or management system for a national marine park need only involve these agencies.

The other agencies can become involved as necessary in an advisory or consultative capacity. The involvement of those New Brunswick provincial agencies listed below would also likely be considerable in the initial years of park establishment and development but would become less important over time.

Tourism: Planning and Development Branch
Environment: Pollution Control Branch
Natural Resources: Crown Lands Division
Municipal Affairs: Community Planning Branch
Historical and Cultural Resource: Historical Sites and Archaeology Branches

How these agencies could interact and coordinate their efforts for national marine park management purposes is the subject of the remainder of this paper.

Table 1

Summary of Major Canadian Federal Legislation Pertinent to the Administration and Management of National Marine Parks

Department	Legislation	Activity Affected
1. Environment	1. Canada Water Act	- amenity considerations - recreation and human health protection - water resource management - water quality management areas
	2. Ocean Dumping Control Act	- dumping of wastes at sea by ship
	3. Environmental Contaminants Act	- introduction of certain deleterious substances into the environment - environmental emergency planning and response
	4. The Clean Air Act	- introduction of harmful substances into the air
	5. Migratory Birds Convention Act	- activities deleterious to birds on land and sea
	6. The Fisheries Act (Section 33)	- introduction of deleterious substances into waters frequented by fish
	7. The Boundary Waters Treaty	- International Joint Commission - Canada and U.S. activities affecting international waters of boundary interest
	8. The Government Organization Act	- coordination of programs affecting environmental quality - federal projects, programs and activities affecting the quality of the natural environment

Department	Legislation	Activity Affected
	9. Canada Wildlife Act	- encouragement of wildlife protection - measures to protect endangered species
	10. National Parks Act	- establishment, management and operation of a system of national parks
2. Fisheries and Oceans	1. The Fisheries Act	- fishing activities - fisheries management - fish habitat management - search and rescue - environmental emergency planning and response
	2. The Government Organization Act	- coordination of policies and programs respecting oceans
	3. The Fishing and Recreational Harbours Act	- provision of fishing and recreational harbours - Marina Policy Assistance Program - Tourist Wharf Program
	4. Territorial Seas and Fishing Zones Act	- international activities in Canadian waters
3. Transport	1. Canada Shipping Act	- ship discharges - ship borne pollution - safety of navigation - receiver of wreck - emergency planning and response - search and rescue
	2. Navigable Waters Protection Act	- interference with navigation - wreck
	3. Transportation of Dangerous Goods Act	- transport of toxic, hazardous and dangerous goods

Department	Legislation	Activity Affected
4. Energy, Mines and Resources (COGLA)	1. The Oil and Gas Production and Conservation Act	- pollution of marine waters from offshore oil and gas exploration and production activities
5. National Defence	1. Defence Act	- pollution surveillance and monitoring - assisting search and rescue operations - resource survey assistance
6. External Affairs	1. The Boundary Waters Treaty	- International Joint Commission
	2. Canada - U.S. Agreement	- Roosevelt-Campobello International Park
7. Solicitor General (RCMP)	1. Criminal Code	- all offences under the Criminal Code
	2. Other federal and provincial statutes	- other activities as per federal and provincial statutes enforced

Source: Adapted from Environment Canada., 1981, Submission to Senior Management Committee on Marine Environmental Quality, November 18, 1981, Halifax, 32 p.

Table 2

Summary of New Brunswick Legislation Pertinent to the Administration and Management of National Marine Parks

Department	Legislation	Activity Affected
1. Natural Resources	1. Mining Act	- exploration for and development of mineral resources - includes seabed mining in Bay of Fundy
	2. Oil and Natural Gas Act	- exploration for and development of oil and natural gas - includes the offshore in the Bay of Fundy
	3. Quarriable Substances Act	- exploration for and development of all quarriable substances - includes shore zone 300 m. below and above high water
	4. Crown Land and Forests Act	- management of surface and subsurface Crown lands and forests - includes seabed under Bay of Fundy
	5. Fish and Wildlife Act	- management of terrestrial wildlife and co-management of inland recreational fisheries
2. Fisheries	1. Fisheries Development Act	- financial assistance and training for fishermen - encourage development of fisheries industry
	2. Irish Moss Act	- licences the harvesting of Irish Moss
3. Environment	1. Clean Environment Act	- water resource management planning - control and abatement of water pollution

Department	Legislation	Activity Affected
4. Municipal Affairs	1. Community Planning Act	- municipal and regional land use planning - land use controls
5. Tourism	1. Tourism Development Act	- promotes development of the tourist industry - sets standards for tourist accommodation and other establishments - provides for information centres
	2. Parks Act	- creation, management and operation of a provincial parks system
6. Historical and Cultural Resources	1. Historic Sites Protection Act	- recongizes and/or gives protected status to historic resources of provincial significance

3.0 OPTIONAL ADMINISTRATIVE ARRANGEMENTS FOR NATIONAL MARINE PARK MANAGEMENT

The preceeding discussion of the existing institutional framework for marine environmental management clearly illustrates the complexity of the management systems that have evolved over time. It is also apparent that a vast body of expertise and experience exists that, while lacking in overall coordination, displays the ability, and centainly greater potential, for implementing effective management programs. The degree of coordination and cooperation that currently exists between DOE, DFO, DOT, and DND with respect to marine habitat management, pollution control, search and rescue and environmental emergencies is indicative of what joint management programs are possible.

These cooperative efforts are, however, very specific to a particular management function, whereas cooperative national marine park management would necessarily encompass them all, to one degree or another. What is required, then, is a cooperative management system that would coordinate all their efforts to one common aim, that of optimum marine park management.

3.1 ORGANIZATIONAL OPTIONS FOR COOPERATIVE MANAGEMENT

It has been stated as a proposed objective for West Isles:

> To manage national marine park resources cooperatively with other federal and provincial government agenices, in particular with the federal departments of Fisheries and Oceans, and Transport, each of which would retain their traditional jurisdications over the management of fisheries and fish resources, and marine transportation, respectively.

To maintain regular liaison with other federal and provincial government agencies involved in the management of the regional coastal and marine environment to ensure that park resources are not impaired and to monitor the impact of the park on the surrounding region.

In addition, the feasibility study must determine, in addition to other criteria , whether or not the following two criteria can be met:

i) The commercial marine fishery can be cooperatively managed in accordance with the National Marine Parks Policy of Parks Canada, while also complying with the management goals and objectives of the Department of Fisheries and Oceans and the social and economic goals of the Province of New Brunswick and the West Isles communities.

ii) A workable and efficient management structure can be arranged between Parks Canada and other federal and provincial government agencies to facilitate the cooperative management of coastal and marine resources and activities in and adjacent to the National Marine Park area.

A joint study recently completed by the B.C. Ministry of Environment and DOE to prepare a management program for the Fraser River Estuary is very instructive in outlining the organizational options that are possible for effecting cooperative management in the West Isles. A review of this study and its findings in this regard follows.

3.2 Case Study: The Fraser River Estuary Study

In 1977, the Federal and B.C. Provincial Ministers of Environment launched the Fraser River Estuary Study (FRES) to prepare, over a 5 year period, a management program for the estuary. One of the background research tasks of this study was to develop a management system for coordinating the efforts of approximately 70 agencies in several levels of government, each of whom have a mandate to manage some aspect of the estuary. While the West Isles case is not as complex, the management system developed for the Fraser could well act as a model to achieve effective inter-agency cooperation in the West Isles/Passamaquoddy Bay marine environment.

3.2.1 The Need for Coordination

The key to cooperative management is coordination. Coordination is defined as "the adjusting, harmonizing, concerting, and/or linking of decisions or policies of separate organizations as they focus on a common set of tasks or problems" (Wolfe, 1982a). While cooperation and coordination are often used interchangeably, in a very real sense, cooperation requires coordination.

Interagency coordination is achieved through the use of structural mechanisms designed to provide a framework within which both technical and managerial decision-makers interact and cooperate. Examples of structural mechanisms within an interorganizational context include task forces, joint councils, conferences, protocol agreements, and referral networks (Wolfe, 1982a).

Wolfe (1982a) describes the merits of such an approach:

> "It is a context within which differences may be discussed and agreements negotiated. Without such a structure, cooperation tends to be ad hoc and patchy. For example, an organization concerned about an issue must either organize a meeting or contact other organizations individually to resolve problems. A structure provides a coordinated means of addressing issues.
>
> Organizational structures also increase "transactions rates" and thereby achieve policy coordination by encouraging the full play of "process forces" which assist mutual understanding. Issues can be discussed and movement toward common objectives fostered. In other words, the development of group cohesiveness and working relationships improves teamwork and coordination.
>
> Structural mechanisms are also important because they provide a visible organization for task accomplishment, defining tasks, responsibilities, authorities and accountabilities. Such structures have the effect of indicating or signalling appropriate behaviours and actions for members. For example, the formation of an interagency committee signals the political goal of interagency cooperation. Reporting requirements, protocol agreements defining relationships, budget allocations, and similar decisions of parent agencies or governments can signal what tasks are to be done and what results are to be achieved" (p. 3).

3.2.2 Principles for Achieving Effective Inter-Agency Cooperation

In considering organizational options for linked or cooperative management for the Fraser Estuary, Wolfe (1982a) researched the various factors that should be considered in developing such a framework:

1. Proximity and Contact

The development of interagency coordination depends upon efficient and effective communication systems. Programs to improve interagency coordination should therefore focus on analysing and improving existing information systems.

2. Structural Compatability

In order for coordination to take place the structures and procedures of each organization must be able to link with other organizations in the system. Programs to improve coordination should therefore identify legal and administrative constraints to coordination. Where necessary special mechanisms may be required to achieve compatability and linkage.

3. Mutual Advantage

Voluntary interorganizational coordination will fail unless each organization receives real, tangible benefits from the association. Therefore, coordination requires a conscious focus on who gains and who loses, and an effort to compensate the losers. Coordination therefore depends on an effort to distribute the costs and benefits of coordination in an effective manner.

4. Gradualism

Interorganizational coordination is favoured by a gradual approach to building relationships. The key to an effective gradual system is the establishment of mechanisms to keep the process moving without forcing the process too quickly.

5. Function-by-Function Adjustment

While gradualism involves the pace of effort, the sequence of effort is also important. The development of coordination should be a step-by-step process with coordination achieved first in one area then in others.

6. The Concensus Principle and Issue Exclusion

In a voluntary coordination process, it is essential that no major decisions be made without every member of the association being satisfied. This may mean re-discussion or non-action on issues where less than unanimity is experienced. It requires compromise and creative thinking to devise generally acceptable decisions. It may also be advisable to avoid or exclude certain issues which are not essential to the decisions needed for the coordination of work.

7. Power Disparities

The prospects for coordination are enhanced where each agency has a minimum of power vis-à-vis others. The power of organizations need not be equal but each organization should hold something of value to the others. To establish a proper power balance for coordination, it may be necessary to limit membership to those with power or to re-structure the distribution of power among the organizations in order to facilitate coordination.

8. Member Relations

In order for organizations to coordinate their efforts, there must a minimum of mutual respect and goodwill. Previous positive experiences with cooperation, training in negotiating skills and group process, and the group experience itself can facilitate positive member relations.

9. Structural Intervention

The establisment of interorganizational cooperation requires a conscious decision to set the stage for coordinated action. While coordination can develop spontaneously, it is best established by a planned process.

10. Joint Decision Committees

Coordination is facilitated by the existence of a structural context whithin which organizations interact and cooperate. Some form of joint decision committee is a prerequisite to effective coordination.

11. Administrative Support

Coordination between organizations is facilitated by the existence of support staff to provide technical expertise, to facilitate or structure the decision process, and to execute common decisions. To be effective, support staff should be considered neutral and capable.

12. Continuity and Follow-Through

To be effective in increasing coordination, mutual agreements must be implemented. There must be a process to ensure that implementation of decisions is effective. There must be ongoing attention to follow-through. (Wolfe, 1982a, p. 17-18)

3.2.3 Alternative Approaches to Cooperative Management

In the Fraser River Estuary Study (FRES), five alternative approaches to cooperative management were explored:

1. continue the existing management process (i.e., maintain the status quo);
2. create a new special purpose agency to manage the estuary (as provided for under the Canada Water Act);
3. consider three approaches to a "linked management system":
    - i) key agency committee
    - ii) lead agency agreements
    - iii) council of estuary governments.

Obviously, maintaining the status quo was not considered a viable alternative. The creation of a new estuary agency or commission was also not considered desirable at that time due to the following reasons:

- A new agency would require legislation that might be difficult - if not impossible - to bring about and could delay the management program. However, once a management program has been implemented, this legislation could be considered at a later date.

- It would be administratively difficult for one agency to oversee the varied management responsibilities of estuary management, especially for both conservation and development in the estuary.

- Today's multiple agency management process, once linked together would provide more points of access for the public than would a single agency.

- An estuary agency would not have authority to affect upland decisions which have a major effect on the estuary.

- There is no inherent reason why a single agency would more effectively realize public visions than a multiple agency system. In fact, single purpose agencies are subject to the same pressures as multiple agency systems. (Wolfe, 1982b)

The FRES Planning Committee opted for a linked management system and three alternatives were considered. Common to all is the basic principle that they comprise:

> "...an agreed upon process by which all the separate government agencies with responsibilities in the Fraser estuary join together certain of their activities. This would ensure better planning, more streamlined govenment administra-

> tion, better deployment of agency resources, better accountability and information sharing." (Wolfe, 1982b, p. 29)

Another basic principle common to all three approaches, and one of particular importance to the West Isles, is:

> "In a "linked system", management would continue to be entrusted to existing agencies which, to a large extent, would retain their present authority and responsibilities. However, instead of each operating separately, perhaps even in conflict with others, certain key agencies would be asked to cooperate in a joint process designed to improve on the present system but not to replace it. The principle involved is to ensure that agencies work together to achieve a common set of goals..." (Wolfe, 1982b, p. 29)

The three alternatives considered are as follows:

1. Alternative A - A Committee Approach

The committee approach would essentially seek a voluntary consensus on an **advisory** management program for those government agencies involved in estuary management. Linkage would be established by agreements between key federal and provincial agencies to participate in a **key agency committee** made up of representatives from the estuary management level. The committee would be a forum for discussion and voluntary agreement on areas of overlap between agency responsibilities.

2. Alternative B - A Lead Agency Approach

The lead Agency approach would designate certain estuary agencies to take the lead in estuary decision making. These agencies would make a mutual commitment to the estuary management program by means of inter-agency agreements or contracts. Agencies giving up job assignments to lead agencies would not be giving up their statutory authority and could step back in if need be. An example of a lead agency agreement now in place is the management agreements by which the Ministry of Lands, Parks and Housing tranfers leasing management to the harbour commissions in areas where the river bed is provincially owned. The agreements designate one agency in each harbour to manage rather than two.

3. Alternative C - An Estuary Council of Governments

This approach would establish a Council of Estuary Governments by intergovernmental agreement and executive orders. The council would be made up of senior officials of the governments involved. They would be delegated executive authority, consistent with prevailing statutes. The council as a whole would have the job of updating and adopting the management program. Overseeing estuary management activity, as well as of preparing and making submissions to their Ministers for budget approval, funding and staffing. Existing agencies would continue to manage the estuary and would jointly staff the council. However, some reorganization of these agencies might be required to more clearly delineate which parts of their organization deal with the estuary.

3.2.4 Evaluation of Cooperative Management Alternatives

In evaluating these alternatives, several points should be kept in mind:

1. "A linked management system is legally feasible and possible to implement effectively under the Canadian legal system (Alexander, L.J. Legal Options for Linked Management, Fraser River Estuary Study, 1981). Under the parliamentary system, there is extensive executive and cabinet power in the hands of government to commit their agencies to a set of Estuary Management Policies. Government orders are an effective and common approach to agency direction. As well, there is considerable scope for agreement on procedures and action programs through a variety of legal instruments. New legislation is not necessary to implement linked management." (Wolfe, 1982b, p. 29)

2. "A linked management system is also organizationally feasible and can be organized to achieve coordination and commitment to a process of joint management (Wolfe, L.D.S. Organizational Options for Linked Management, 1981). To be successfully implemented on a scale such as that contemplated on the Fraser Estuary, a careful program of implementation should be undertaken. However, there is wide scope and variety to the organizational forms and processes which might be employed to implement such an approach. Over time,

different organizational forms may be used to address new or different common problems." (Wolfe, 1982b, p. 29)

3. There is no one best way to organize and the above alternatives are not necessarily mutually exclusive. They can also be implemented in different ways.

4. The legal and organizational means are available to implement a cooperative management system. The crucial ingredient, however, is the will to make it happen. In addition, any management system may be strong or weak, depending not only on its mandate, but its personnel, and particular, its leadership.

The three alternatives were evaluated against the management challenges they were intended to resolve. The list of management challenges is included as Appendix 7.

"1. The Committee Approach

The Committee option would provide a context for agreeing on common policy goals and objectives. However, agreements reached under the committee approach would be entirely advisory in nature. Conflicts or changes in policy would be referred to senior or political levels for resolution. A clear process or channel for conflict mediation would be required.

A committee approach could simplify present administration by agreeing to streamline procedures. However, committee processes involve time and resources to operate effectively.

A committee would be able to agree on the development of agency resources, people and money. Such agreement would be necessary for preparation of activity programs. However, in implementing joint programs, multilateral activity could generate inefficiencies.

It is a common criticism of committees that it is hard to hold committees accountable for specific tasks. Committee activity is no guarantee that all issues will be dealt with. Accountability is a problem with committees.

A committee process, however, is generally more open and accountable if representation of outside interests is provided for. Further, committees tend to facilitate information exchange and therefore improve information sharing.

2. The Lead Agency Approach

Lead agency contracts assume prior agreement on policy goals and objectives before agreements can be concluded. This approach is not conducive to joint goal setting unless lead agencies have commitment to effective consultative processes. Conflicts, as with committees, would be referred to senior or political levels. In addition, however, any plan amendments or agreement interpretations must be referred to higher authorities, unless lead agencies have unilateral powers to act. In the latter case, agreement on policy is sacrificed.

Lead agency agreements, however, are particularly valuable in the simplifying of government administrative processes. Where a lead agency is designated, proponents and the public have a single agency to deal with. That agency liaises as necessary, but for the public there is a "one-stop" procedure.

Because lead agencies reduce the number of agencies through delegation, the authority to act is more direct. Resources can be marshalled to solve problems, make decisions, resolve conflicts. However, where the lead agency lacks the appropriate resources - land, money, people - the lead agency is not able to meet its assigned responsibilities. There is no mechanism to internally shift resources among agencies under the lead agency approach. The lead agency approach requires a continuing evaluation of the distribution of agency resources by governments. Such evaluation is a normal part of the budgetary process. A management program assists by identifying explicit objectives and priorities.

Accountability of lead agencies is enhanced by clear assignment of responsibilities. However, lead agencies tend to have independent power and thereby avoid accountability. Accountability is often assured by the reserved right of second agencies to step-in.

The reduced consultation between agencies resulting from the lead agency delegation results in less information exchange.

> ### 3. The Council Approach
>
> Depending on what authority is delegated to a council, a council may have a clear ability to agree on policy goals and objectives for the estuary.
>
> A council could directly manage people, money and other resources. However, ultimate budget decisions for capital items would not likely be delegated to a council. With a supporting or seconded staff element, the council would be able to reduce interagency 'committee' work, thus saving time and staff overall.
>
> The council would result in some accountability difficulties, as with the committee approach. A related problem arises in the question of whether council members should be accountable to their agencies or are administratively independent.
>
> Councils, like committees, are a facilitator of information exchange and communication." (Wolfe, 1982b, p. 31-33)

In summary, the study team found that all three approaches had their strengths and weaknesses and that no one approach in itself appeared to be the best or most appropriate:

> "A closer look at the alternatives suggest that the committee and council approaches are preferable for planning and representation. The lead agency approach is most effective for implementation.

> The committee approach provides for joint participation in setting goals and policies. It allows for joint ventures in implementation of multi-agency programs. It provides a forum for agreement on lead agency assignments.
>
> The lead agency approach, on the other hand, is an efficient and effective means for implementing many of the agreed committee policies. It provides for clear delegation and accountability. It simplifies the administration of policy. Simplification means greater access and less confusion for proponents and the public. It has potential problems of accountability and responsiveness which could be remedied by having lead agencies guided by a committee." (Wolfe, 1983b, p. 33)

The analysis concluded that a hybrid was preferable, with the committee approach being employed for planning and representation and the lead agency approach for implementation (Wolfe, 1983b).

The details of the linked or cooperative management system proposed for the Fraser Estuary is included as Appendix 8. In addition to the committee system and lead agencies component, it includes a special processes component to provide for:

i) a participation process - to enable interests to influence decisions that affect them;

ii) a coordinated referrals and assessment process to simplify and coordinate agency decision-making;

iii) an information system to serve as a contact point and information source for agencies, the public and special interests.

The conclusions of the Fraser River Estuary Study are supported by other similar studies and practical experience. In their study, Coastal Zone Framework for Management in Atlantic Canada, Johnston *et al* (1975) also identified the need for cooperative management and went so far as to recommend the establishment of Coastal Zone Commissions as part of a four tier system of coastal zone management. Based on the committee structure, the first level would be involved in the management of a limited geographic area, such as a national marine park, and would involve a limited number of agencies. The second tier would involve a larger area, such as Passamaquoddy Bay with a broader set of objectives; the third, an even larger area, such as the Bay of Fundy, and the fourth, "a comprehensive planning body for the entire coastal region of Atlantic Canada" (p. 152). While it is unlikely that such a regime would ever exist in Canada, a cooperative management framework for the West Isles would be consistent with the first level of this proposal.

3.3 AN EXAMPLE: THE GREAT BARRIER REEF MARINE PARK AUTHORITY

The Great Barrier Reef Marine Park Authority (GBRMPA), was established in Australia in 1975 under the Great Barrier Reef Marine Park Act. This federal legislation charged the Authority with the responsibility to provide for the wise use of the Reef in perpetuity.

The GBRMPA is an excellent example of a new single special purpose agency, with its own legislation, to establish and manage a national marine park. In fulfilling its mandate, the GBRMPA must also cooperate with other federal and state government agencies, as well as the public, and the cooperative management approach described above has been utilized by the Authority to accomplish this.

The Authority's strategy is found in this message from the Chairman:

> "The over-riding nature of regulations made under the Act, and the potential extent of application of these regulations, in both geographical and social terms, places a great responsibility on the Authority and its staff to act with care, competence and regard for the rights of people and organisations who use or have responsibilities in relation to the Reef. It is not a responsibility that we take lightly. Commensurate with meeting the conservational and preservational objectives set out in the Act, which require, we believe, provision for the wise use and enjoyment of the Great Barrier Reef in perpetuity, we minimize interfering with existing management mechanisms or with existing human activities. We rely to the maximum extent practicable on co-operation with other organisations and the utilization of their technical and human resources." (GBRMPA, 1983, p. 1)

The Authority has had to establish a particularly close working relationship with the Queensland National Parks and Wildlife Service (QNPWS) in all aspects of establishment, development and management of the marine park, as well as in the formulation of policies and programmes. The State Government of Queensland has retained jurisdiction over the islands of the Reef and that area between high and low water, and its responsibilities for management have been defined in the Queensland Marine Parks Act of 1982.

Under an agreement between the Commonwealth of Australia and the State of Queensland, the responsibilities of the two agencies are defined as outlined below. In simplistic terms, day to day marine park management is undertaken by the QNPWS within the guidelines and in accordance with policies and programs set by the Authority in consultation with Queensland agencies.

The Authority's Role

The Park Management Section of the Authority plays a vital role in planning and overseeing management programs and in coordinating activities for the Marine Park. Its responsibilities include:

- implementing provisions in the Zoning Plan and regulations, in co-operation with QNPWS;
- assisting in the development of agreements between Governments for day-to-day management;
- developing guidelines, policies, and programs for park management in consultation with other Government agencies;
- assisting in the preparation of management plans for particular areas of the Marine Park;
- coordinating activities with other Authority staff and with staff of the QNPWS in Brisbane and Rockhampton;

- overseeing the conduct of day-to-day management programs, including payment of funds;
- providing secretariat services for the Great Barrier Reef Marine Park Management Coordinating Committee;
- preparing reports and policy advice to the Authority on Marine Park management matters;
- advising on future zoning and management of other sections of the Marine Park;
- developing, operating and reviewing an integrated permit system for the Marine Park. (GBRMPA, 1983, p. 27)

Role of Queensland National Parks and Wildlife Service

The QNPWS has the responsibility for establishing and implementing day-to-day management procedures for the Marine Park. Its responsibilities include:

- implementing approved programs within policies and guidelines approved by the Authority;
- developing sub-programs and projects for interpretation, monitoring, aerial surveillance, and boat patrols;
- assisting in the preparation of management plans and proposals for declaration of restricted access areas;
- establishing personal contacts with Reef users;

- developing operational procedures;

- purchasing equipment, recruiting staff and establishing offices and field bases. (GBRMPA, 1983, p. 28)

Coordination between these agencies is achieved through the Management Coordinating Committee, consisting of nominees of the Chariman of the Authority, the Coordinator-General of Queensland and executive officers of the following Queensland agencies:

- National Parks and Wildlife Service
- Department of Primary Industries
- Land Administration Commission
- Department of Harbours and Marine.

The Chairman of this Comittee is the Executive Officer of the Authority.

Support services for the Committee are provided by Park Management staff of the Authority, with meetings being held at least twice a year.

Staff of the GBRMPA and QNPWS coordinate their activities through regular formal meetings and submit quarterly and annual reports on park management to the Authority. Informal contracts are also maintained on a daily basis.

There are also two other administrative bodies at either end of the spectrum to provide for coordination and cooperation. The Great Barrier Reef Ministerial Council was established to coordinate policy between the federal and state governments, comprised of two Ministers from each Government.

The other is the Great Barrier Reef Consultative Committee. Its functions are to "advise the Commonwealth Minister for Home Affairs and Environment on matters relating to the operation of the Act and to advise the Authority on Marine Park matters referred to it by the Authority". (GBRMPA, 1983, p. 9)

"The Consultative Committee represents a wide and varied cross-section of interests in the Great Barrier Reef, from both the public and private sectors and including tourism, fishing, science, and conservation." A review of the Committee's membership illustrates the range of representation:

Commonwealth Department of Primary Industry
Queensland Commercial Fishermen's State Council
Queensland Department of Harbours and Marine
Australian Conservation Foundation
Queensland Tourist and Travel Corporation
Commonwealth Department of Sport, Recreation and Tourism
Commonwealth Department of Transport
Australian Littoral Society
Queensland Game Fishing Association
Great Barrier Reef Committee
Far North Queensland Promotions Bureau - Tourism Task Force
Australian Underwater Federation
Queensland Amateur Fishing Council
Queensland National Parks and Wildlife Service
James Cook University of North Queensland
Great Barrier Reef Marine Park Authority
Australian Institute of Marine Science

Members are appointed for a period of three years.

This example of the administrative framework for the GBRMPA clearly displays the utilization of both the committee system to effect interagency coordination and the lead agency approach for implementation, an approach very similar to that recommended by the Fraser River Estuary Study.

This kind of cooperative management system has great potential for application in the West Isles.

4.0 COOPERATIVE MANAGEMENT IN THE WEST ISLES

Of the three alternative approaches to cooperative management discussed in Section 3.2.3, it is assumed here that to continue with the existing management regime in the West Isles, with the establishment of a national marine park, is not a viable option. It is a basic premise of this study that effective cooperative management for a national marine park will require a new administrative structure that provides for the coordination of the efforts of the agencies involved.

It is also assumed that national marine parks would be established under an amended National Parks Act, or other new legislation, and that Parks Canada would continue to be the lead agency responsible, in the most part, for their management and administration. The second option considered, then, that of creating a new special purpose agency accompanied with new legislation, is not considered any further here. It is recognized, however, that a new Act for national marine parks may be considered at some future date, as may new and more appropriate administrative structures.

The creation of a new administrative regime that provides for the effective coordination of the policies and programs of those agencies involved in marine environmental management in the West Isles area is the most appropriate option to pursue. The combined committee and lead agency approach that was found most suitable for the Fraser Estuary, and which has been successfully applied in the Great Barrier Reef, is recommended for the West Isles.

In order to apply a system of cooperative management, one must first identify the management challenges to be addressed.

4.1 IDENTIFICATION OF MANAGEMENT CHALLENGES

The following management challenges have been adapted extensively from Wolfe's work on the Fraser River Estuary Study (Wolfe, 1982b), but are also consistent with the work completed thus far in the various tasks of the West Isles Feasibility Study and from the public consultation sessions held in the West Isles area in June, 1984. The nature of these management challenges will assist in determining the design of the cooperative management system, and is an important part of the process of defining the superordinate goals that will ultimately require the consensus of all the management agencies involved.

Six overall management challenges have been identified. They are outlined here in general terms to describe the overall functions of a cooperative management system.

1. Agreement on Policy Goals and Objectives

   Government agencies, public groups and individuals, industry and business groups, and other users differ widely in their basic objectives. These differences are reflected in conflicts between groups, agencies, users and citizens. Such conflicts result in the loss of opportunities to cooperate in achieving basic common objectives. If the goal of balance between economic growth on the one hand and protection and conservation of the natural environment in the other is to be achieved, agreement on goals is needed.

   Government agencies, business interests and the public affected by the management program - or asked to carry it out - are more likely to make a firm commitment to it if they are involved in its preparation. Continued involvement of all these groups, in developing and evaluating management goals and policies, should provide a general framework for the multitude of specific decisions and plans made for managing the national marine park. There are bound to be conflicts of interest when a new proposal for an action or development emerges, but, with a broad vision and agreed upon goals, it will be easier for groups to reach compromise and agreement on specific issues. Decisions may not be easier, but they may be wiser.

2. Simplify Government Administration

While the present jurisdictional framework for managing the marine park area is not unmanagebly complex, there are several agencies involved in both federal and provincial governments with marine management responsibilities. Their activities and services sometimes overlap and conflict. Agencies often operate parallel approvals processes which complicate actions and confuse the public. It is also not unusual to find duplication of professional, technical and other services. The proposed cooperative management system should offer opportunities to achieve greater efficiency by sharing, delegating and coordinating overlapping responsibilities.

3. Manage financial, human and other resources effectively.

The visions, policies and goals of this management approach will not happen automatically. For proposals to become reality, the coordinated efforts of many agencies are required. Because of the diversity of funding arrangements and jurisdictional responsibilities, many agencies lack the ability to implement their mandates without the assistance and cooperation of other agencies. At the same time, cooperation is necessary for the success of other public objectives which may not be part of specific mandates. Thus, the management program is a vehicle for combining agency efforts towards achieving park objectives.

4. Assure that all agencies are accountable.

Accountability for all government agencies involved is the only way to assure that all fulfill their commitments. Accountability means that government agencies carry out the policies decided in the political process. In a society with multiple objectives this means accommodating individual agency mandates to the wider public interest. It means greater openness and responsiveness to the wider public interest. It requires the ability of agencies to evaluate their performance in relation to the various parts of the management program. Greater accountability can be achieved in a number of ways, ranging from a central project registry, and information system to performance monitoring, enforcement, intergovernmental contracts or changes in administrative or legislated responsibility.

5. Provide useful and accurate information.

Information sharing is essential to coordinated management. Decision makers need clear and accurate information to answer questions and make decisions. Is the proposed action consistent with marine park, goals and objectives? How would the proposal affect other users or activities in the park or adjacent waters? Is the proposal the only or best way to get the job done? How would this decision affect other decisions in the park?

Public groups and private industry need information to guide their actions, to identify how government decisions and natural processes affect their interests, and to satisfy man's need to understand his environment.

6. Provide meaningful public involvement in the decision-making process.

The flow of information to the public and the business community must be complemented by a reverse flow of knowledge from these groups to the decision makers and the opportunity to discuss and negotiate matters of mutual interest. The single forum provided by a cooperative management system provides the public with direct access to all agencies involved.

4.2 A PROPOSED COOPERATIVE MANAGEMENT SYSTEM

4.2.1 The Identificaton and Role of Lead Agencies

A major component of the proposed cooperative management system for the West Isles involves the identification of key or lead agencies responsible for performing certain management functions within a national marine park. Lead agencies have been moninated on the basis of their current managment responsibilities and capabilities, on the geographic area involved, the resources to be managed, available expertise, jurisdictional issues and the type of management function.

The major role of the lead agencies, over and above their regular responsibilities, would be to implement the policies and programs with respect to their activities within a national marine park as agreed upon through cooperative agreements with Parks Canada. They could also undertake planning or other studies or contribute staff or facilities to joint projects. For example, the Fisheries Research Branch in the St. Andrews Biological Station could, upon agreement, be nominated the lead role for fisheries research for park management purposes, just as the Canadian Wildlife Service has conducted wildlife research in the terrestrial parks. As another example, five agencies, each with their own legislative mandate, have responsibilities for water pollution control. It may prove advisable to nominate one lead agency to perform this function with the support of the others. The relationships between the lead and other agencies would have to be clear with the primacy to act specifically documented. Such arrangements are now in place, for example, for environmental emergencies and search and rescue operations.

In addition to the active role of Parks Canada, it is clear that the departments of Fisheries and Oceans and of Transport would be key participants in the management of a national marine park. These three agencies have, then, been identified as the lead agencies whose efforts in the West Isles must be effectively coordinated to achieve marine park objectives. All other agencies would exercise their involvement either through the course of performing their regular duties or as the result of consultation as the need arise.

The Role of Parks Canada

Parks Canada would be responsible for the overall management of a national marine park, and would play the lead role in ensuring the coordination of its activities with those of Fisheries and Oceans, Transport and other agencies as required. Parks Canada would be entirely responsible for resource protection in those terrestrial portions of a marine park, such as those offshore islands that may be part of the park, for all visitor activity programs and related facilities, and for non-marine wildlife management. Parks Canada would also be the lead agency responsible for the preparation and implementation of a park management plan, in cooperation with other government agencies and in consultation with the local public. Through cooperative agreements with other agencies, Parks Canada would play an active role in the protection and conservation of natural and cultural marine resources, marine research, search and rescue and emergency response, the provision and maintenance of navigational aids, and the regulation and control of recreational and tour boating, fishing and SCUBA diving.

The Role of Fisheries and Oceans

The Department of Fisheries and Oceans (DFO) would continue to be the lead agency responsible for the management of commercial and non-commercial fisheries and of marine mammals, for marine research and for the conservation and protection of marine habitats under the provisions of the Fisheries Act. The establishment of a national marine park would not affect DFO's jurisdiction over the management of fish stocks. Through a cooperative agreement with Parks Canada, DFO and Parks Canada would jointly prepare a fisheries management plan for the marine park, at the time of park establishment, that would be consistent with DFO's regional fisheries management plans but would also address those fisheries management concerns that relate to park management and operation. The fisheries management plan for the park would comprise a portion of the park management plan prepared by Parks Canada.

The Role of Transport

The Department of Transport (DOT) would retain its role as lead agency responsible for marine transportation under the provisions of the Canada Shipping Act. In general, the establishment of a national marine park would not affect DOT's jurisdiction over marine transportation. In particular, and with specific respect to marine park management requirements, DOT would continue to manage commercial vessel traffic, shipping safety, search and rescue operations, environmental emergency response, and the provision and maintenance of navigational aids. DOT would also continue to administer the provisions of the Navigable Waters Protection Act and the Transportation of Dangerous Goods Act within marine park waters. Under a cooperative agreement with DOT, Parks Canada would play an active role in the regulation and control of recreational and tour boating and boating safety in marine park waters, would assist in the provision and maintenance of navigational aids and in search and rescue and environmental emergency operations.

4.2.2 Impact on the Existing Administrative Regime

The intent of this cooperative management system would be to interfere as little as possible with the existing jurisdictional authority of the agencies currently involved in marine and coastal management, but to ensure the effective coordination of their activities to achieve a common goal. It is Parks Canada's preference that these agencies, the lead agencies in particular, continue to fulfill their responsibilities by commiting human and financial resources as required to meet demands placed upon them in a national marine park.

It is also recognized, however, that while existing legislative instruments would be utilized to the maximum extent possible for management purposes, new regulations may be required to achieve certain park management objectives. Further investigation of some of the legal implications of proposed management actions would be required to identify deficiences in the legal instruments available and the need for new regulations or legislative provisions.

Further, the details of the cooperative agreements that would be required between Parks Canada and other government agencies have yet to be developed. Of particular importance would be the specific allocation of management responsibilities among the lead agencies and the apportionment of human and financial resources to implement the respective programs. The identification of enforcement responsibilities is a particular case in point. It is anticipated that, in the event of park establishment, Parks Canada would sign a Memorandum of Understanding with each of DFO and DOT, and with other government agencies as necessary, to define these working arrangements.

In view of the above uncertainties, the following statements of principle regarding enforcement should nevertheless apply:

1) all lead agencies would retain their current responsibilities for administering their legislation and enforcing their regulations.

2) any new regulations that may be required and that are promulgated under the National Parks Act would be enforced by Parks Canada.

3) in adddition, it may be necessary for certain Parks Canada staff to be authorized to enforce some of the Acts and regulations of other agencies to assist them in carrying out their responsibilities.

4.2.3 The Committee Component for Cooperative Management

A cooperative management system in the West Isles must provide for three levels of cooperation:

1) Parks Canada - other federal agencies
2) Parks Canada - provincial agencies
3) Parks Canada - local public/special interest groups

There must also be sufficient linkages built into the system to enable communication and cooperation among all the parties involved, as required.

It must also be recognized that there are two different spatial contexts within which cooperative management must occur. The first is with regard to the national marine park itself. Secondly, if a national marine park is to be managed in a regional context, a mechanism should be estalished to facilitate cooperative management with the other federal, but in particular, the provincial, agencies responsible for managing the regional coastal zone.

To this effect, two committees are proposed as follows:

- a national marine park public consultation committee;
- a national marine park interdepartmental coordination committee.

In addition, a less formal regional intergovernmental liaison function would be recognized and consultation with other government agencies, over and above the lead agencies, would occur as required.

These two committees and the informal regional linkages would comprise the committee component of the cooperative management system. The lead agency component was described in Section 4.2.1 above. The purpose and membership of these committees is described below.

1) The National Marine Park Public Consultation Committee

Purpose

The purpose of this committee would be to provide opportunities, on a regular and systematic basis, for the local public to participate in the decision-making process with Parks Canada, DFO and DOT on matters relating to park planning, management, implementation and operations.

Membership

This committee could consist of members of the local public, special interest groups and organizations that have a direct interest in how the park is managed. Participants could include, for example, representatives from the Deer Island Steering Committee, Chamber of Commerce, Local Service Districts, the Fundy Weir Fishermen's Association and representatives of other sectors of the fishing industry, local municipal councils, tourism associations, and private industry. In addition, formal public consultation would take place as required to ensure input from others not associated with this committee. It is important to note that this committee would not replace nor supercede the public consultation mechanisms utilized by DFO in the preparation of its regional fisheries management plans.

2) The National Marine Park Interdepartmental Coordination Committee

Purpose

The primary role of this committee would be to coordinate the formulation and implementation of the policies and programs of its member agencies to be as consistent as possible with the management goals and objectives of a national marine park.

Membership

This committee would represent the local management level of the lead agencies involved in the management and operation of the park and the various activities that take place within it, namely Parks Canada, as the committee coordinator, DFO and DOT.

Discussion

It is recognized in the draft National Marine Parks Policy that both DFO and DOT will retain their traditional jursidiction over fisheries and marine transportation. Therefore, this approach provides for the individual decision making authority of each agency which is excecuted following the necessary coordination with each other through the committee. Under this arrangement, the Park Superintendent would retain full authority over park operations and management with the exception of certain functions, such as commercial fisheries and marine transportation. The committee would consult with other federal or provincial agencies and the public consultation committee, as required.

The committee could act as a central point of access for the public on park related matters.

3) Regional Intergovernmental Liaison

In order for a national marine park to be managed effectively, it must be managed in a regional context, preferably within a comprehensive coastal zone management framework. At a minimum, however, as noted in Section 2.2.4 of the draft National Marine Parks Policy, "cooperative arrangements will be sought with provincial and ... other federal departments and agencies, and foreign governments to mitigate the effects of any external activity which could threaten marine park resources and impair the quality of the regions aquatic environment". It is not proposed that a formal committee be established for this purpose, but that it be recognized that the need for liaison with other government agencies, at all levels, would be periodically necessary and that the appropriate consultations would be sought as required.

Purpose

The purpose of this liaison would be to coordinate as required the efforts of those agencies involved in the management of resources and associated activities in the regional coastal environment to ensure that the marine environment of the park is not impaired and to monitor the impact of the park on the surrounding region.

Agencies to be Consulted

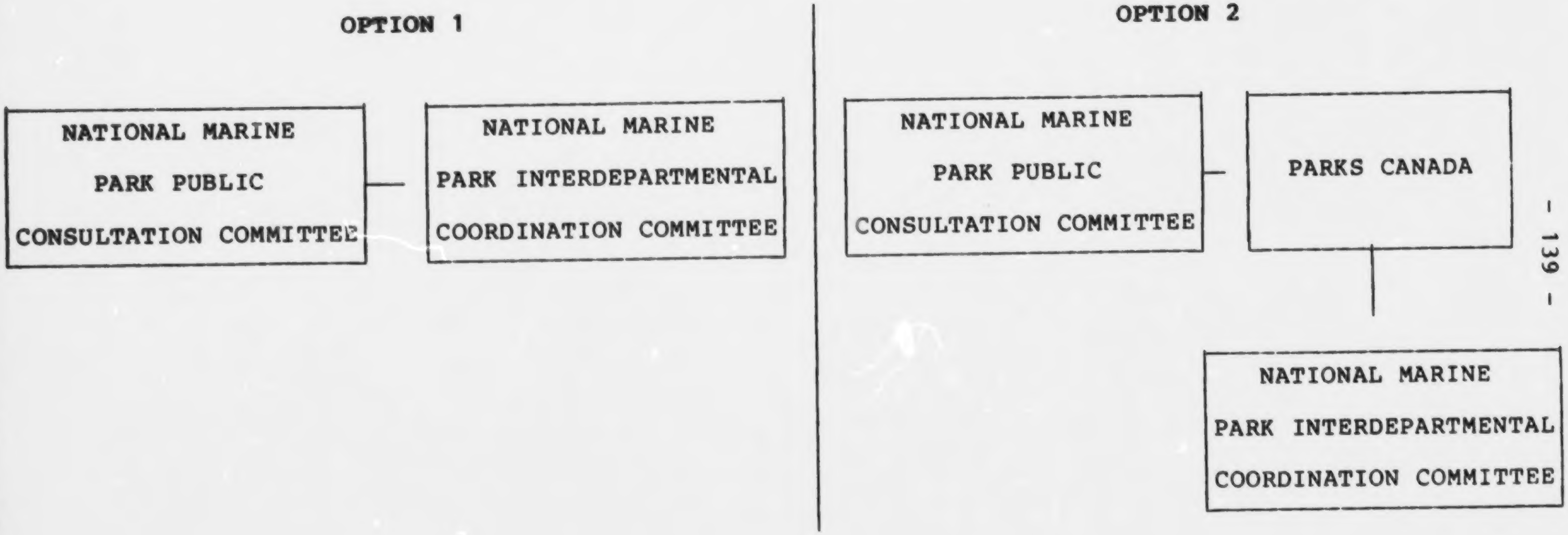
The principle agencies to be consulted would include the Environmental Protection Service and those provincial agenices responsible for land use and water pollution control, including the Departments of Municipal Affairs, Fisheries, Environment, and the Crown Lands Division of the Department of Natural Resources. Other agencies such as Tourism New Brunswick or the appropriate agencies from the State of Maine could be consulted as necessary. Linkage to the International Joint Commission, if not requried directly, could be established through DFO.

4.2.4 Optional Organizational Structures

Two alternative structures for the organizational relationship of the National Marine Park Interdepartmental Coordination Committee and its members with the National Marine Park Public Consultation Committee were considered. These two options are displayed graphically on Figure 1 on the following page.

Figure 1

OPTIONAL ORGANIZATIONAL STRUCTURES FOR COOPERATIVE MANAGEMENT


OPTION 1
NATIONAL MARINE PARK PUBLIC CONSULTATION COMMITTEE
NATIONAL MARINE PARK INTERDEPARTMENTAL COORDINATION COMMITTEE
OPTION 2
NATIONAL MARINE PARK PUBLIC CONSULTATION COMMITTEE
PARKS CANADA
NATIONAL MARINE PARK INTERDEPARTMENTAL COORDINATION COMMITTEE

The organizational structure of Option 1 has the park interdepartmental coordinating committee consulting directly, as a unit, with the public consultation committee. In Option 2, however, the Park Superintendent, as coordinator of the interdepartmental committee, consults with the public consultation committee and then refers it to the interdepartmental committee for consideration.

These options are presented here to demonstrate that alternatives do exist for the organizational structure of these committees. No attempt has yet been made to determine which would operate the most effectively in the West Isles.

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APPENDICES

APPENDIX 1

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Powers of Fisheries Officers:
Sections 35-43 of the Fisheries Act

POWERS OF FISHERY OFFICERS

Power to search

35. Any fishery officer may search or break open and search any building, vehicle, vessel or place other than a permanent dwelling place where he believes, on reasonable and probable grounds, that any fish taken in contravention of this Act or the regulations, or anything used in contravention thereof, is concealed.

Arrest

36. Any fishery officer, fishery guardian or peace officer may arrest without warrant a person whom he, on reasonable and probable grounds, believes to have committed an offence against this Act or any regulation, or whom he finds committing or preparing to commit an offence against this Act or any regulation. R.S., c. 119, s. 37.

37. Revoked, Statutes of Canada, 1976-77, c. 35.

Interfering with officer

38. Every one who resists or wilfully obstructs any fishery officer or fishery guardian in the execution of his duty, or any person acting in aid of such officer or guardian, is guilty of an offence punishable on indictment, or on summary conviction, and liable if convicted on indictment to a term not exceeding two years imprisonment, and on summary conviction to a term not exceeding six months imprisonment with hard labour or to a fine of one hundred dollars. R.S., c. 119, s. 39.

Entry by fishery officer

39. In the discharge of his duties any fishery officer, fishery guardian or other person or persons accompanying him or authorized to such effect by the fishery officer, may enter upon and pass through or over private property without being liable for trespass. R.S., c. 119, s. 40.

Disputes

40. Disputes between persons relative to fishing limits or claims to fishery stations, or relative to the position and use of nets and other fishing apparatus, shall be settled by the local fishery officer. R.S., c. 119, s. 41.

Distances between fisheries

41. Fishery officers may determine or prescribe the distance between each and every fishery and shall forthwith remove any fishing apparatus or materials that the owner neglects or refuses to remove; and such owner is liable for a violation of this Act, and for the cost of removing such apparatus and materials and any damages that may result therefrom. R.S., c. 119, s. 42.

Boundaries of estuary fishing

42. The Minister, or any fishery officer duly authorized by the Minister, has power to define the boundaries of tidal waters and estuaries and to designate what is the mouth of any river, stream or other water for the purposes of this Act. R.S., c. 119, s. 43.

POUVOIRS DES FONCTIONNAIRES DES PÊCHERIES

Perquisitions

35. Les fonctionnaires des pêcheries peuvent, au besoin par la force, faire des perquisitions dans tout immeuble, véhicule, navire ou lieu autre qu'une résidence permanente où ils croient, en se fondant sur des motifs raisonnables et probables, que se trouvent cachés des poissons pris ou des objets utilisés en contravention à la présente loi ou aux règlements.

Arrestation

36. Tout fonctionnaire des pêcheries, garde-pêche ou agent de la paix peut arrêter sans mandat une personne qu'il croit, pour des motifs raisonnables et vraisemblables, avoir commis une contravention à la présente loi ou à tout règlement, ou qu'il prend en flagrant délit de contravention ou se préparant à commettre une contravention à la présente loi ou à un règlement. S.R., c. 119, art. 37.

37. Abrogé, Status du Canada 1976-77, chap. 35.

Résistance aux fonctionnaires

38. Quiconque résiste ou délibérément suscite des entraves à un fonctionnaire des pêcheries ou garde-pêche dans l'exercice de ses fonctions, ou à toute personne agissant comme aide de ce fonctionnaire ou garde, est coupable de contravention punissable par voie de mise en accusation ou après déclaration sommaire de culpabilité et passible, s'il est reconnu coupable sur une mise en accusation, de deux années d'emprisonnement au plus, et, après déclaration sommaire de culpabilité, de six mois d'emprisonnement au plus avec travaux forcés ou d'une amende de cent dollars. S.R., c. 119, art. 39.

Droit de passage des fonctionnaires des pêcheries

39. Dans l'accomplissement de ses devoirs, tout fonctionnaire des pêcheries, tout garde-pêche ou autres personnes qui l'accompagnent ou autorisées à cet effet par le fonctionnaire des pêcheries, peuvent pénétrer dans une propriété particulière et y passer, sans s'exposer à une poursuite pour violation du droit de propriété. S.R., c. 119, art. 40.

Contestations

40. Sont réglées par le fonctionnaire local des pêcheries, les contestations entre les personnes au sujet des limites de pêcheries ou de réclamations relatives à des stations de pêche ou à la position et à l'usage de filets et autres engins de pêche. S.R., c. 119, art. 41.

Distance entre les pêcheries

41. Les fonctionnaires des pêcheries peuvent déterminer ou prescrire la distance à laisser entre les différentes pêcheries, et ils doivent enlever sur-le-champ tous engins de pêche ou matériaux quelconques que le propriétaire néglige ou refuse d'enlever; et ce propriétaire est coupable de contravention à la présente loi et responsable des frais d'enlèvement de cet engin de pêche et de ces matériaux et de tous dommages qui peuvent en résulter. S.R., c. 119, art. 42.

Limites des pêches dans les estuaires

42. Le Ministre, ou tout fonctionnaire des pêcheries dûment autorisé par lui, a le pouvoir de définir les limites des eaux à marée et estuaires et de désigner ce qui est l'embouchure d'une rivière, d'un cours d'eau, ou de définir toute autre nappe d'eau pour les fins de la présente loi. S.R., c. 119, art. 43.

Gurry grounds

43. Gurry grounds may be designated or defined by any fishery officer. R.S., c. 119, s. 44.

GENERAL

Waters of propagation of fish

44. The Minister may authorize any river or other water to be set apart for the natural or artificial propagation of fish. R.S., c. 119, s. 48.

Special licences for oyster beds

45. Special licences and leases for any term of years may be granted to any person who wishes to plant or form oyster beds in any of the bays, inlets, harbours, creeks or rivers, or between any of the islands on the coast of Canada; and the holder of any such lease or licence has the exclusive right to the oysters produced or found on the beds within the limits of such lease or licence. R.S., c. 119, s. 49.

Authority to provinces to grant leases for oyster cultivation

46. (1) The Governor in Council may, upon such terms and conditions as are agreed upon, authorize the government of any province to grant leases of such areas of the seacoast, bays, inlets, harbours, creeks, rivers and estuaries of such province as the government of such province considers suitable for the cultivation and production of oysters, and any persons to whom such leases are granted by such province, subject to the fishery regulations of Canada, have the exclusive right to the oysters produced or found on the beds within the limits of their respective leases.

Rights of Canada preserved

(2) In the event of such areas, or any part thereof, being in a public harbour, nothing in this section prejudices the right or title of Canada to the enjoyment and use of such harbour for every purpose other than the cultivation and production of oysters. R.S., c. 119, s. 50.

Vacant public property

47. (1) Every subject of Her Majesty may use vacant public property, such as by law is common and accessory to public rights of fishery and navigation for the purpose of landing, salting, curing and drying fish, and may cut wood thereon for such purposes, and no other person shall occupy the same station unless it has been abandoned by the first occupant for twelve consecutive months; and at the expiration of that period any new occupier shall pay the value of the flakes and stages and other property thereon, of which he takes possession, or the buildings and improvements may be removed by the original owner.

Leased property

(2) No property leased or licensed shall be deemed vacant. R.S., c. 119, s. 51.

Places pour jeter les poissons

43. Les endroits où sont jetés les détritus de poisson peuvent être désignés ou définis par tout fonctionnaire des pêcheries. S.R., c. 119, art. 44.

DISPOSITIONS GÉNÉRALES

Rivières pour la propagation du poisson

44. Le Ministre peut autoriser la mise à part de toute rivière ou autre pièce d'eau pour la propagation naturelle ou artificielle du poisson. S.R., c. 119, art. 48.

Permis spéciaux pour les bancs d'huîtres

45. Il peut être accordé des permis et baux spéciaux pour un nombre quelconque d'années à toute personne qui désire établir ou former des huîtrières dans les baies, anses, havres, criques ou rivières, ou entre les îles situées sur les côtes du Canada; et le titulaire de ce bail ou de ce permis a un droit exclusif à l'égard des huîtres produites ou trouvées sur les bancs dans les limites désignées dans le bail ou permis. S.R., c. 119, art. 49.

Autorisation aux provinces d'accorder des baux pour l'ostréiculture

46. (1) Le gouverneur en conseil peut, dans les termes et aux conditions convenus, autoriser le gouvernement d'une province à accorder des baux couvrant telles étendues du littoral de la mer, des baies, anses, havres, criques, rivières et estuaires de cette province que le gouvernement de cette province juge propices à la culture et à la production des huîtres, et toutes les personnes à qui ces baux sont accordés par cette province possèdent, sous réserve des règlements relatifs aux pêcheries du Canada, un droit exclusif sur les huîtres produites ou trouvées sur les bancs compris dans les limites de leurs baux respectifs.

Sauvegarde des droits du Canada

(2) Si lesdites étendues ou l'une de leurs parties sont comprises dans un havre public, nulle disposition du présent article ne porte atteinte au droit ou titre que possède le Canada à la jouissance de ce havre et à son utilisation pour toute autre fin que l'ostréiculture. S.R., c. 119, art. 50.

Terrains publics vacants

47. (1) Tout sujet de Sa Majesté peut utiliser des terrains publics vacants, dont l'usage, en vertu de la loi, est commun et inhérent au droit public de pêche et de navigation, pour y débarquer, saler, préparer et faire sécher le poisson, et il peut y couper du bois pour ces objets; et personne autre ne peut s'installer au même poste ou endroit à moins qu'il n'ait été abandonné par le premier occupant durant douze mois consécutifs; et, à l'expiration de cette période, tout nouvel occupant paie la valeur des séchoirs et plates-formes et autres dispositifs qui s'y trouvent et dont il prend possession, ou bien les constructions et améliorations peuvent être enlevées par leur premier propriétaire.

Propriété sous permis

(2) Nulle propriété affermée ou cédée sous permis n'est censée vacante. S.R., c. 119, art. 51.

APPENDIX 3

Powers of Inspectors: Section 33.2 of the Fisheries Act

(b) restrict the operation of the work or undertaking,

and, with the approval of the Governor in Council in any case, direct the closing of the work or undertaking for such period as the Minister or a person designated by the Minister considers necessary in the circumstances.

Regulations

(3) The Governor in Council may make regulations

(a) prescribing the manner and circumstances in which any information or material shall be provided to the Minister without request under subsection (1); and

(b) prescribing the manner and circumstances in which the Minister or a person designated by the Minister may make orders under subsection (2) and the terms of such orders.

Consultation with provinces

(4) Where the Minister or a person designated by the Minister proposes to make an order pursuant to subsection (2), he shall offer to consult with

(a) the governments of any provinces that he considers to be interested in any such proposed order, and

(b) any departments or agencies of the Government of Canada that he considers appropriate,

but nothing in this subsection prevents the Minister or a person designated by the Minister from making an interim order pursuant to subsection (2) without such consultation where he considers that immediate action is necessary.

Inspectors and analysts

33.2 (1) For the purposes of this section, the Minister may designate as an inspector or analyst any person who, in the opinion of the Minister, is qualified to be so designated.

Certificate of designation

(2) An inspector shall be furnished with a certificate of his designation as an inspector and on entering any place, premises, vehicle or vessel referred to in subsection (3) shall, if so required, produce the certificate to the person in charge thereof.

Powers of inspectors

(3) An inspector may, at any reasonable time, enter any place, premises, vehicle or vessel, other than a private dwelling place or any part of any place, premises, vehicle or vessel used as a permanent or temporary private dwelling place, where he believes on reasonable and probable grounds that

(a) an offence under section 33 is being, has been or is likely to be committed, or

(b) any work or undertaking described in paragraph 33.1 (1) (a) is being, has been or is likely to be carried on,

and may, where he reasonably believes it is necessary to do so for any purpose related to the enforcement of this section, conduct inspections, including examining any substance or product found therein, taking samples thereof and conducting tests and measurements.

Statutes of Canada 1976-77, c. 35

b) soit, restreindre l'exploitation de l'ouvrage ou de l'entreprise,

soit, avec l'approbation du gouverneur en conseil dans tous les cas, ordonner la fermeture de l'ouvrage ou de l'entreprise pour la période que le Ministre ou une personne désignée par ce dernier juge nécessaire dans les circonstances.

Règlement

(3) Le gouverneur en conseil peut, par règlement,

a) prescrire les cas où des documents et des renseignements doivent être fournis au Ministre sans qu'il en fasse la demande en vertu du paragraphe (1) et la façon de les lui fournir; et

b) prescrire les cas où le Ministre ou la personne qu'il désigne peut rendre l'ordonnance prévue au paragraphe (2) et les modalités de fond et de forme applicables.

Consultation

(4) Le Ministre ou la personne qu'il désigne qui se propose de rendre une ordonnance en vertu du paragraphe (2) doit offrir

a) aux gouvernements des provinces qu'il considère intéressés par cette ordonnance, et

b) aux ministères et organismes du gouvernement du Canada qu'il juge à propos,

de les consulter; mais le présent paragraphe n'empêche pas le Ministre ou la personne qu'il désigne de rendre une ordonnance intérimaire en vertu du paragraphe (2) lorsqu'il ou cette personne est d'avis qu'il est nécessaire d'agir immédiatement.

Inspecteurs et analystes

33.2 (1) Le Ministre peut, pour l'application du présent article, nommer des inspecteurs ou des analystes parmi les personnes qu'il juge compétentes.

Certificat de désignation

(2) Un inspecteur doit être pourvu d'un certificat de nomination à cette fonction et, en entrant dans un lieu, un local, un véhicule ou un navire mentionné au paragraphe (3), il doit, s'il en est requis, produire le certificat à la personne qui en a la charge.

Pouvoirs de l'inspecteur

(3) L'inspecteur peut, à toute heure raisonnable, entrer dans un lieu ou un local ou monter à bord d'un véhicule ou d'un navire, à l'exclusion des logements privés et des parties de ces lieux, locaux, véhicules ou navires utilisées comme logements privés permanents ou temporaires, dans les cas où il a des motifs raisonnables et probables de croire

a) qu'une infraction à l'article 33 a été, est, ou sera vraisemblablement commise, ou

b) qu'un ouvrage ou une entreprise visés à l'alinéa 33.1 (1) a) a été, est ou sera vraisemblablement exploité

et il peut, dans les cas où il a des motifs raisonnables de croire que c'est nécessaire pour l'application du présent article, procéder à des inspections et examiner toute substance ou produit trouvés sur les lieux, prélever des échantillons, faire des tests et recueillir des données.

Statuts du Canada 1976-77, chap. 35

Duty to report

(4) Where, out of the normal course of events, there occurs a deposit of a deleterious substance in water frequented by fish or a serious and imminent danger thereof by reason of any condition, and where any damage or danger to fish habitat or fish or the use by man of fish results or may reasonably be expected to result therefrom, any person who at any material time

(a) owns the deleterious substance or has the charge, management or control thereof, or

(b) causes or contributes to the causation of the deposit or danger thereof,

shall, in accordance with any regulations applicable thereto, report such occurrence to an inspector or such other person or authority as is prescribed by the regulations.

Duty to take all reasonable measures

(5) Every person referred to in paragraph (4) (a) or (b) shall, as soon as possible in the circumstances, take all reasonable measures consistent with safety and with the conservation of fish and fish habitat to prevent any occurrence referred to in subsection (4) or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result therefrom.

Power to take or direct remedial measures

(6) Where an inspector, whether or not a report has been made under subsection (4), is satisfied on reasonable grounds that there is an occurrence referred to in subsection (4) and that immediate action is necessary in order to carry out any reasonable measures referred to in subsection (5), he may, subject to subsection (7) and the regulations, take any such measures or direct that they be taken by any person referred to in paragraph (4) (a) or (b).

Inconsistent orders

(7) Any requirement or direction of an inspector under this section that is inconsistent with a requirement or order of a pollution prevention officer under the Canada Shipping Act is void to the extent of the inconsistency.

Access to property

(8) For the purposes of subsections (4) to (6), any inspector or other person may enter and have access through any place, premises, vehicle or vessel and may take all reasonable action in order to comply with those subsections or any of them, but nothing in this subsection relieves any person from liability at law for his illegal or negligent acts or omissions or for loss or damage caused to others by such entry, access or action.

Regulations

(9) The Governor in Council may make regulations prescribing

(a) the person or authority to whom or which a report is to be made under subsection (4), the manner in which the report is to be made, the information to be contained therein and the circumstances in which no report is required to be made;

Obligation de faire rapport

(4) Lorsque, hors du cours normal des choses, se produisent le rejet ou l'immersion dans des eaux où vivent des poissons d'une substance nocive ou un risque sérieux et imminent de rejet ou d'immersion et qu'il y a une possibilité raisonnable qu'un danger pour le poisson ou son habitat se produise ou que l'utilisation par l'homme du poisson soit compromise, les personnes qui, aux époques pertinentes,

a) étaient propriétaires de la substance nocive ou en avaient la charge, l'administration ou le contrôle, ou

b) ont causé le rejet, l'immersion ou le risque de rejet ou d'immersion ou y ont contribué,

doivent, conformément aux règlements pertinents, en faire rapport à un inspecteur ou à toute autre personne ou organisme que prévoient les règlements.

Obligation de prendre des mesures correctrices

(5) Les personnes visées aux alinéas (4) a) ou b) doivent, dans les meilleurs délais, vu les circonstances, prendre toutes les mesures correctrices nécessaires, compatibles avec la sécurité et la conservation des poissons de leur habitat, pour réduire ou réparer les dommages qui résultent ou sont susceptibles de résulter de l'événement décrit au paragraphe (4).

Pouvoir de prendre ou d'ordonner des mesures correctrices

(6) Qu'un rapport ait été fait ou non en vertu du paragraphe (4), un inspecteur peut, sous réserve du paragraphe (7) et des règlements, prendre ou ordonner que soient prises par les personnes visées aux alinéas (4) a) ou b) les mesures correctrices mentionnées au paragraphe (5), lorsqu'il est convaincu, en se basant sur des motifs raisonnables, qu'un événement mentionné au paragraphe (4) s'est produit et que ces mesures sont nécessaires.

Directives incompatibles

(7) Les directives qu'un inspecteur donne en vertu du présent article qui sont incompatibles avec les ordres que donne un fonctionnaire chargé de la prévention de la pollution en vertu de la Loi sur la marine marchande du Canada sont nulles dans la limite de cette incompatibilité.

Accès

(8) Aux fins des paragraphes (4) à (6), un inspecteur ou toute autre personne a accès à tout lieu, endroit, véhicule ou navire et peut prendre les mesures raisonnables pour se conformer à ces paragraphes; cependant, rien au présent paragraphe ne limite la responsabilité générale de toute personne pour ses actes ou omissions illégaux ou des pertes ou dommages causés à des tiers lors de ces visites ou suite à ces mesures.

Règlements

(9) Le gouverneur en conseil peut, par règlement, prescrire

a) la personne ou l'organisme à qui doit être envoyé le rapport mentionné au paragraphe (4), la forme de ce rapport, les informations qu'il doit contenir et les cas où il n'est pas nécessaire d'en faire un;

(b) the manner in which inspectors may take any measures or give any directions under subsection (6) and the conditions to which such measures or directions are subject;

(c) the manner and circumstances in which any measures taken or directions given under subsection (6) may be reviewed, rescinded or varied; and

(d) any other matters necessary for or incidental to carrying out the purposes and provisions of this section.

Assistance to inspectors

(10) The owner or person in charge of any place, premises, vehicle or vessel entered by an inspector pursuant to subsection (3) and every person found therein shall give the inspector all reasonable assistance in his power to enable the inspector to carry out his duties and functions under this section and shall furnish the inspector with such information with respect to the administration of this section as he may reasonably require.

Certificate of analyst as proof

(11) Subject to subsections (12) and (13), a certificate purporting to be signed by an analyst stating that he has analyzed or tested a substance or product and stating the result of his analysis or test is admissible in evidence in any prosecution for an offence under section 33 or 33.4 without proof of the signature or official character of the person appearing to have signed the certificate and, in the absence of any evidence to the contrary, is proof of the statements contained in the certificate.

Attendance of analyst

(12) The party against whom there is produced any certificate pursuant to subsection (11) with leave of the court, require the attendance of the analyst for the purposes of cross-examination.

Notice

(13) No certificate shall be received in evidence pursuant to subsection (11) unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate in question.

Obstruction of inspector

33.3 (1) No person shall obstruct or hinder an inspector in the carrying out of his duties or functions under section 33.2.

False statements

(2) No person shall knowingly make a false or misleading statement, either verbally or in writing, to an inspector engaged in carrying out his duties or functions under section 33.2.

Offences and punishment

33.4 (1) Every person who

(a) fails to provide the Minister with any material or information requested pursuant to subsection 33.1 (1) within a reasonable time after the request is made,

(b) fails to provide or submit any material, information or report that is to be provided or submitted under regulations made pursuant to subsection 33.1 (1),

(c) fails to make a report that he is required to make under subsection 33.2 (4),

R.S.C. 1970, c. 17 (1st Supp.)
Statutes of Canada 1976-77, c. 35

b) la façon dont doivent être données les directives des inspecteurs en vertu du paragraphe (6) et les conditions qui leur sont applicables;

c) la façon dont peuvent être revues, modifiées ou annulées les mesures correctrices prises ou ordonnées en vertu du paragraphe (6) et les circonstances qui peuvent y donner lieu; et

d) toute autre chose nécessaire à l'application générale du présent article.

Obligations d'assistance

(10) Le propriétaire ou le responsable des lieux, locaux, navires ou autres véhicules où l'inspecteur procède aux visites autorisées par le paragraphe (3) et quiconque s'y trouve doivent, dans la mesure du possible, lui prêter assistance pour lui permettre d'exécuter les fonctions que lui confère le présent article et lui fournir les renseignements qu'il peut raisonnablement exiger concernant l'application de la présente loi.

Certificat de l'analyste

(11) Sous réserve des paragraphes (12) et (13), les certificats apparemment signés par un analyste et attestant qu'il a analysé ou examiné une substance ou un produit et énonçant ses conclusions sont admissibles en preuve dans les poursuites fondées sur une infraction aux articles 33 ou 33.4 et établissent l'exactitude de leur contenu jusqu'á preuve du contraire, sans qu'il soit nécessaire d'authentifier la signature ni d'établir la qualité officielle du signataire.

Comparution de l'analyste

(12) La partie à laquelle sont opposés les certificats prévus au paragraphe (11) peut, avec l'autorisation du tribunal, assigner l'analyste à comparaître pour les contre-interroger.

Préavis

(13) Les certificats ne sont pas admissibles en preuve en vertu du paragraphe (11) si la partie qui se propose de les produire n'a pas donné à la partie adverse un préavis raisonnable de son intention, accompagné d'une copie de ces certificats.

Obstruction faite à un inspecteur

33.3 (1) Nul ne doit faire obstacle à un inspecteur dans l'exercice des fonctions que lui confère l'arricle 33.2.

Fausses déclarations

(2) Nul ne doit faire sciemment, oralement ou par écrit, une déclaration fausse ou trompeuse à un inspecteur dans l'exercice des fonstions que lui confère l'article 33.2.

Infractions et peines

33.4 (1) Quiconque

a) néglige ou refuse de fournir au Ministre les documents et les renseignements prévus au paragraphe 33.1 (1) dans un délai raisonnable suivant la demande,

b) néglige ou refuse de présenter les documents, les renseignements ou les rapports conformément aux règlements d'application du paragraphe 33.1 (3),

c) néglige de faire le rapport que le paragraphe 33.2 (4) exige de lui;

S.R.C. 1970, chap. 17 (1er Supp.)
Statuts du Canada 1976-77, chap. 35

APPENDIX 4

MEMORANDUM OF UNDERSTANDING

MÉMOIRE D'ENTENTE

BETWEEN

THE DEPARTMENT OF
FISHERIES AND OCEANS

AND

THE DEPARTMENT OF
THE ENVIRONMENT

ON THE SUBJECT OF

THE ADMINISTRATION OF
SECTION 33 OF THE
FISHERIES ACT

ENTRE

LE MINISTÈRE DES
PÊCHES ET DES OCÉANS

ET

LE MINISTÈRE DE
L'ENVIRONNMENT

AU SUJET DE

L'ADMINISTRATION DE
L'ARTICLE 33 DE LA LOI
SUR LES PÊCHERIES

OTTAWA, ONTARIO
MAY, 1985
MAI, 1985

MEMORANDUM OF UNDERSTANDING

BETWEEN: THE DEPARTMENT OF FISHERIES AND OCEANS (CANADA) AS REPRESENTED BY THE DEPUTY MINISTER OF THAT DEPARTMENT, OF THE FIRST PART;

AND: THE DEPARTMENT OF THE ENVIRONMENT (CANADA) AS REPRESENTED BY THE DEPUTY MINISTER OF THAT DEPARTMENT, OF THE SECOND PART.

WHEREAS the Minister of Fisheries and Oceans has responsibility under the Government Organization Act (1979) to manage sea coast and inland fisheries;

AND WHEREAS the Minister of the Environment has responsibility under the Government Organization Act (1979) for preservation of the natural environment, including the marine environment;

AND WHEREAS the Government Organization Act (1979) assigns to the Minister of Fisheries and Oceans the legislative responsibility for the Fisheries Act R.S.C. 1970, c.F-14 and regulations;

AND WHEREAS by a Prime Ministerial instruction, the provisions of Section 33 of the Fisheries Act related to deleterious substances and the regulations pursuant to that section (hereinafter referred to as Section 33) were to be administered for an interim period by the Minister of State (Environment) and his officials;

MÉMOIRE D'ENTENTE

ENTRE: LE MINISTÈRE DES PÊCHES ET DES OCÉANS (CANADA), REPRÉSENTÉ PAR LE SOUS-MINISTRE DE CE MINISTÈRE, D'UNE PART;

ET: LE MINISTÈRE DE L'ENVIRONNEMENT (CANADA), REPRÉSENTÉ PAR LE SOUS-MINISTRE DE CE MINISTÈRE, D'AUTRE PART.

ATTENDU QUE le ministre des Pêches et des Océans doit, en vertu de la Loi de 1979 sur l'organisation du gouvernement, gérer les pêches côtières et intérieures;

ET ATTENDU QUE le ministre de l'Environnement doit, en vertu de la Loi de 1979 sur l'organisation du gouvernement, préserver l'environnement naturel et, partant, l'environnement marin;

ET ATTENDU QUE la Loi de 1979 sur l'organisation du gouvernement confère au ministre des Pêches et des Océans la responsabilité législative de la Loi sur les pêcheries, S.R.C. 1970, c.F-14, et de ses règlements d'application;

ET ATTENDU QUE, de par les directives du Premier Ministre, les dispositions de l'article 33 de la Loi sur les pêcheries concernant les substances nocives et les règlements d'application de cet article (ci-après appelé article 33) doivent être provisoirement administrés par le ministre d'État (Environnement) et ses représentants;

AND WHEREAS the Parties desire to continue this administative arrangement respecting Section 33 of the Fisheries Act until further notice;

AND WHEREAS Section 33 of the Fisheries Act is intended to protect fish and fish habitat from actions that cause or may cause the pollution of waters and is therefore of interest to both Parties in fulfilling their respective mandates.

THEREFORE THE PARTIES AGREE:

1. To cooperate and communicate openly and regularly with each other at appropriate official levels on any and all matters relating to the administration of Section 33 and on such other matters that may be mutually agreed upon.

2. For each province and territory where the federal government is directly responsible for the management of the fisheries resources, the Parties in their regions shall hold their senior managers responsible for communicating on matters of substance and concern to the Parties related to Section 33, such as the following:

   - notifications, assessments, and investigations with respect to major development projects;
   - departmental positions on major development projects;

ET ATTENDU QUE les parties désirent, jusqu'à nouvel ordre, maintenir cet arrangement administratif concernant l'article 33 de la Loi sur les pêcheries;

ET ATTENDU QUE l'article 33 de la Loi sur les pêcheries a pour but de protéger le poisson et son habitat de toute action qui pollue ou peut polluer les eaux et que, de ce fait, il intéresse les deux parties pour ce qui est de l'accomplissement de leurs mandats respectif.

PAR CONSÉQUENT, LES PARTIES CONVIENNENT DE CE QUI SUIT:

1. Collaborer et communiquer ouvertement et régulièrement, aux niveaux appropriés, sur tout sujet ayant trait à l'administration de l'article 33 et sur d'autres aspects d'intérêt mutuel.

2. Pour chaque province et territoire où le gouvernement fédéral est directement responsable de la gestion des ressources halieutiques, les parties chargeront leurs gestionnaires supérieurs dans leurs régions de communiquer entre eux sur des aspects de l'article 33 intéressant les parties comme:

   - avis, évaluations et enquêtes concernant des grands projets de développement;
   - positions ministérielles sur des grands projets de développement;

- actions proposed by agents of provincial governments;
- plans to release public statements;
- plans to consult with the public;
- plans to monitor and audit approved projects, and the results therefrom;
- identification of fishery resource or habitat information required to support protection actions;
- requirements for scientific criteria on which protection action and regulations may be based;
- identification of research needs;
- funding and coordination of research and monitoring programs;
- proposals to seek injunctions in the courts;
- proposed regulations and amendments to existing regulations;
- proposed policies on fish habitat and environmental quality; and
- annual program reviews.

3. Where regional working level officials representing the Parties are unable to reach

- mesures proposées par des agents provinciaux;
- plans de déclarations publiques;
- plans de consultation avec le public;
- plans de contrôle et de vérification des projets approuvés, et résultats pertinents;
- identification des ressources halieutiques ou données sur l'habitat pour étayer les mesures de protection;
- besoin de critères scientifiques pouvant servir de base à des règlements et à des mesures de protection;
- identification des besoins de recherche;
- financement et coordination de programmes de contrôle et de recherche;
- propositions d'injonctions devant les tribunaux;
- projets de réglementation et de modifications de règlements existants;
- projets de politiques sur l'habitat du poisson et la qualité de l'environnement; et
- révisions annuelles de programmes.

3. Lorsque les cadres régionaux représentant les parties au niveau de travail

agreement on a course of action for any issue, the matter shall be referred for arbitration by each Party to the Regional Director-General of Fisheries and Oceans and the Regional Director of the Environmental Protection Service, and if the matter is not resolved at that level, to headquarters Assistant Deputy Ministers as described in clause 5.

4. Decisions respecting the disposition of a project application or respecting any contemplated enforcement action pursuant to Section 33 shall not be disclosed or publicly discussed by either Party, any of their officials, or by any persons privy to those decisions, until such time as the Parties have discussed the matter and have jointly otherwise determined, using such formal and informal procedures that may be agreed upon locally by the Parties.

5. At headquarters in Ottawa the Assistant Deputy Minister, Pacific and Freshwater Fisheries (DFO) and the Assistant Deputy Minister, Environmental Protection Service (DOE) will meet as required; but at least annually to:

   a) deal with issues on which there is no resolution at the regional level;

sont incapables de s'entendre sur une question quelconque, l'affaire doit être soumise à l'arbitrage de chaque partie, c'est-à-dire au directeur général régional des Pêches et des Océans et au directeur régional du Service de la protection de l'environnement et, s'il n'y a pas de solution à ce niveau, aux sous-ministres adjoints de l'administration centrale, désignés dans la clause 5.

4. Aucune décision relative aux dispositions de l'application d'un projet ou à une mesure d'application réglementaire envisagée en vertu de l'article 33 ne doit être divulguée ni discutée publiquement par l'une ou l'autre des parties, leurs représentants ou toutes les personnes au courant de la décision jusqu'à ce que les parties aient discuté de l'affaire et se soient entendues par voie de procédures officielles ou officieuses adoptées localement par les parties.

5. À l'administration centrale, à Ottawa, le sous-ministre adjoint, Pêches du Pacifique et des eaux douces (MPO), et le sous-ministre adjoint, Service de la protection de l'environnement (MDE), se réuniront au besoin, mais au moins une fois l'an, pour:

   a) régler les problèmes non résolus au niveau régional;

b) consider proposed regulations and amendments to existing regulations pursuant to Section 33; and

c) discuss national policy issues of concern to the Parties.

6. For minor issues and emergency situations where fish habitat, including water quality, is being or may be adversely affected, the Parties may mutually determine such informal procedures as are needed at headquarters or in regions for purposes of rapidly communicating with each other and generally meeting the terms of this agreement.

7. This Memorandum of Understanding will not require additional resources for either Party, as each Party regularly allocates funds and human resources as part of its A-Base for purposes of administering a fish habitat management program in the case of the Party of the first part and Section 33 in the case of the Party of the second part.

8. Notwithstanding any of the above, but subject to clause 3, the Party of the first part, given its legislative position respecting Section 33, reserves the right to take action directly in circumstances where the fisheries resource is being affected by

b) étudier des projets de règlements et de modifications aux règlements existants, en vertu de l'article 33; et

c) discuter de questions de politique nationale intéressant les parties.

6. Pour les problèmes mineurs et les cas d'urgence où l'habitat du poisson, y compris la qualité de l'eau, est dégradée ou risque de l'être, les parties peuvent établir ensemble des procédures officieuses à suivre à l'administration centrale ou dans les régions dans le but de communiquer rapidement l'une avec l'autre et de satisfaire d'une façon générale les conditions du présent accord.

7. Le présent mémoire d'entente n'exigera aucune ressource supplémentaire pour les parties car chacune affecte régulièrement des fonds et des ressources humaines, dans le cadre de son budget A, afin d'administrer un programme de gestion de l'habitat du poisson, pour ce qui est de la partie de première part, et d'appliquer l'article 33, pour ce qui est de la partie de seconde part.

8. Nonobstant ce qui précède mais conformément à la clause 3, la partie de première part, étant donnée sa position législative concernant l'article 33, se réserve le droit d'agir directement quand le rejet d'une substance nocive nuit

the deposit of a deleterious substance and also where the Party of the second part is unable or unwilling to take such action.

9. The operation of this Memorandum of Understanding shall be reviewed annually by the Parties.

10. If deemed appropriate by both Parties, working agreements may be developed in a particular region, similar for example to that existing between the Parties in Atlantic Canada, and these may be appended as annexes to this Memorandum of Understanding.

11. This Memorandum of Understanding may be amended at any time on mutual consent of the Parties.

IN WITNESS WHEREOF, the representatives of the Parties hereto have executed this Memorandum of Understanding this 6 day of May, 1985.

Deputy Minister of
Fisheries and Oceans

Jacques Gérin

Deputy Minister of the
Environment

à la ressource halieutique et que la partie de seconde part est incapable ou refuse d'agir.

9. L'application du présent mémoire d'entente sera revue annuellement par les parties.

10. Si les parties le jugent à propos, elles pourront établir des accords de travail dans une région particulière, semblables par exemple à celui qui existe entre les parties dans la région canadienne de l'Atlantique, et ces accords pourront être annexés au présent mémoire d'entente.

11. D'un commun accord, les parties peuvent à tout moment modifier le présent mémoire d'entente.

EN FOI DE QUOI les représentants des parties ont signé le présent mémoire d'entente le 6 jour de mai, 1985.

Sous-ministre des Pêches des
Océans

Sous-ministre de
l'Environnement

APPENDIX 5

TRANSPORT REGULATIONS

CANADA SHIPPING ACT

MASTER INDEX

NOVEMBER 1983

NO.	REGULATIONS	JUSTICE CONSOL. CHAPTER	LATEST SOR	REG. UPDATED BY TRANSPORT CANADA
1	Aids to Navigation Protection Regs	1403	-	5 Nov. 80
2	Air Pollution Regulations	1404	-	5 Nov. 80
3	Board of Steamship Inspection Scale of Fees	1405	SI 83-73	21 Apr. 83
4	Boat and Fire Drill Regulations	1406	82-1054	9 Dec. 82
5	Boating Restriction Regulations	1407	82-788	16 Sept 82
93	Burlington Canal Regulations	1408	-	1 May 80
6	Canadian Ship's Flag Regulations	1409	-	1 May 80
7	Canso Zone Marine Traffic Regulations	1410	79-782	1 May 80
8	Certification of Able Seamen Regs	1411	82-436	10 May 82
9	Certification of Lifeboat Men Regs	1412	82-298	26 Mar. 82
10	Certification of Ships' Cooks Part 1 and Part 11	1413& 1414	82-603	23 June 82
11	Charts and Publications Regulations	1415	79-731	10 Feb. 81
12	Chemical Carrier (Steamship) Regs	--	79-90	1 May 80
13	Classed Ships Inspection Regulations	1434	-	1 May 80
14	Collision Regulations	1416	83-202	18 Mar. 83
15	Crew Accommodation Regulations	1418	78-77	1 May 80
16	Dangerous Goods Shipping Regulations	1419	82-1053	9 Dec. 82
17	Distressed Seamen Regulations	1420	-	1 May 80

NO.	REGULATIONS	JUSTICE CONSOL. CHAPTER	LATEST SOR	REG. UPDATED BY TRANSPORT CANADA
18 -	Eastern Canada Traffic Zone Regs	--	81-454	25 June 81
19 -	Emergency Position Indicating Buoy Regulations	1421	79-783	1 May 80
20 -	Fire Detection & Extinguishing	1422	83-175	9 Mar. 83
21 -	Fisherman's Notice of Claim for Loss of Income Regulations	1423	-	1 May 80
22 -	Garbage Pollution Prevention Regs	1424	-	1 May 80
23 -	General Load Line Rules	1425	78-775	1 May 80
24 -	Grain Cargo Regulations	1427	79-902	1 May 80
25 -	Great Lakes Navigation Safety Regs	1428	79-805	1 May 80
26 -	Great Lakes Sewage Pollution Prevention Regulations	1429	82-410	26 Apr. 82
27 -	Home-Trade, Inland & Minor Waters Voyages Regulations	1430	79-91	5 Nov. 8[illegible]
28 -	Hull Construction Regulations	1431	83-521	8 July 83
29 -	Hull Inspection Regulations	1432	-	1 May 81
30 -	Inspection Certificate Form	1433	79-45	10 Feb. 81
31 -	Large Fishing Vessel Inspection Regs	1435	83-707	28 Oct. 83
32 -	Life Saving Equipment Regulations	1436	83-500	24 June 83
33 -	Liquefied Petroleum Gas Regulations	1437	-	1 May 80
34 -	Load Line Assignment Authorization Order	1438	80-108	5 Nov. 80
35 -	Load Line Exemption Order	1439	SI 81-105	4 Aug. 81
36 -	Load Line Regulations (Inland)	1440	80-250	5 Jan. 81
37 -	Load Line Regulations (Sea)	1441	82-971	15 Nov. 82
38 -	Load Line Rules for Lakes and Rivers	1442	78-217	1 May 80
39 -	Marine Engineer Examination Regs	1443	83-254	18 Apr. 83

40 - Maritime Pollution Claims Fund Regs	1444	-	1 May 80
41 - Master & Engineer Dual Capacity Regs	1445	-	1 May 80
42 - Masters & Mates Examination Regulation	1446	83-652	30 Aug. 83
43 - Medical Examination of Seafarers Regulation	1447	-	1 May 80
44 - Minor Waters Order	1448	82-843	24 Sept 82
45 - Navigating Applicances Regulations	1449	82-526	14 June 82
46 - Nominal Horsepower Computing Method	1450	79-492	1 May 80
47 - Non-Canadian Ships Compliance Certificate Regulations	1451	80-728	30 Dec. 81
48 - Non-Canadian Ships Safety Order	1452	-	1 May 80
97 - Oil Carriage Limitation Regulations	--	82-244	8 Mar. 82
49 - Oil Pollution Prevention Regulations	1454	80-281	12 Jan. 81
50 - Pilot Ladder Regulations	--	83-860	30 Nov. 83
51 - Pleasure Yachts Marking Order	1457	-	1 May 80
52 - Pollutant Substances Regulations	1458	83-347	4 May 83
94 - Port Wardens Tariff	--	83-291	25 Apr. 83
53 - Private Buoy Regulations	1460	-	1 May 80
54 - Registration of Government Ships Regulations	1463	-	1 May 80

NO.	REGULATIONS	JUSTICE CONSOL. CHAPTER	LATEST SOR	REG. UPDATED BY TRANSPORT CANADA
56 -	Safe Manning Regulations	1466	79-438	1 Aug. 80
57 -	Safe Working Practices Regulations	1467	79-632	1 Aug. 80
58 -	Safety Convention Certificate Regulations	1468	-	1 May 80
59 -	St. Clair & Detroit River Vessel Speed Regulations	1469	-	1 May 80
60 -	(St. Lawrence Waterway) Marine Traffic Regulations	1470	83-626	10 Aug. 83
61 -	Sealing Ships Construction Regs	1471	78-358	1 Aug. 80
62 -	Ship Radio Inspection Fees Regs	1472	78-668	10 Feb. 81
63 -	Ship Station Radio Regulations	--	83-304	4 May 83
64 -	Ship Station Technical Regulations	--	81-441	1 June 8[illegible]
65 -	Ship's Draught Marks Exemption Order	1476	-	1 May 80
66 -	Shipping Casualties Appeal Rules	1477	-	1 May 80
67 -	Shipping Casualties Reporting Regs	1478	-	1 May 80
68 -	Shipping Inquiries & Investigations Rules	1479	82-983	16 Nov. 82
69 -	Ship's Crew Food & Catering Regs	1480	79-437	1 Aug. 80
70 -	Ship's Deck Watch Regulations	1481	80-549	5 Dec. 80
71 -	Ship's Elevator Regulations	1482	-	1 May 80
72 -	Ship's Names Registration Regulations	1483	-	1 May 80
95 -	Ships Registration Form Regulation	-	81-121	9 Mar. 81
73 -	Ship's Registry Fees Tariff	1484	SI 83-74	14 Apr. 83

NO.	REGULATIONS	JUSTICE CONSOL. CHAPTER	LATEST SOR	REG. UPDATED BY TRANSPORT CANADA
74 -	Ship's Tonnage Survey & Measurement Fees Regulations	1485	SI 83-67	28 Oct. 83
75 -	Small Fishing Vessel Inspection Regs	1486	83-706	20 Oct. 83
76 -	Small Vessel Regulations	1487	82-837	24 Sept 82
77 -	Steamship Machinery Construction Order	1490	-	5 Nov. 80
78 -	Steamship Machinery Construction Regs	1491	81-253	8 Apr. 81
79 -	Steamship Machinery Inspection Regs	1492	81-26	19 Jan. 81
80 -	Steamships Carrying Cargo Containers Order	1489	83-303	4 May 83
81 -	Steering Appliances and Equipment Regulations	1493	83-810	31 Oct. 83
82 -	Tackle Regulations	1494	79-784	1 Aug. 80
83 -	Tariff of Fees of Shipping Masters	1495	-	1 May 80
84 -	Timber Cargo Regulations	1496	79-586	1 May 80
85 -	Tonnage of Ships Order	1497	81-601	12 Aug. 81
86 -	Towboat Crew Accomodation Regulations	1498	78-144	5 Dec. 80
96 -	VHF Radiotelephone Practices and Procedures Regulations		81-364	27 May 81

NO.	REGULATIONS	JUSTICE CONSOL. CHAPTER	LATEST SOR	REG. UPDATED BY TRANSPORT CANADA
	ANCHORAGE REGULATIONS - GENERAL			
88	Conception Bay	1417	-	1 May 80
89	Northumberland Strait	1453	78-755	1 Aug. 80
90	Parry Bay	1455	-	1 Aug. 80
91	Random Sound	1462	79-533	1 Aug. 80
92	Welland Canal Entrances	1499	79-858	1 May 80

APPENDIX 6

CANADA

TREATY SERIES **1964 No. 17** RECUEIL DES TRAITÉS

CULTURE

Roosevelt Campobello International Park

Agreement between CANADA and the
UNITED STATES OF AMERICA

Signed at Washington January 22, 1964

Entered into force August 14, 1964

CULTURE

Parc international Roosevelt de Campobello

Accord entre le CANADA et les
ÉTATS-UNIS D'AMÉRIQUE

Signé à Washington le 22 janvier 1964

En vigueur le 14 août 1964

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I

AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA RELATING TO THE ESTABLISHMENT OF THE ROOSEVELT CAMPOBELLO INTERNATIONAL PARK.

The Governments of Canada and the United States of America

Noting the generous offer by the Hammer family of the summer home of President Franklin Delano Roosevelt on Campobello Island, New Brunswick, Canada, with the intention that it be opened to the general public as a memorial to President Roosevelt, and the acceptance in principle of this offer by Prime Minister Lester B. Pearson and President John F. Kennedy at Hyannis Port in May 1963; and

Recognizing the many intimate associations of President Roosevelt with the summer home on Campobello Island; and

Desiring to take advantage of this unique opportunity to symbolize the close and neighborly relations between the peoples of Canada and the United States of America by the utilization of the gift to establish a Canadian-United States memorial park;

Agree as follows:

ARTICLE 1

There shall be established a joint Canadian-United States commission, to be called the "Roosevelt Campobello International Park Commission", which shall have as its functions:

(a) to accept title from the Hammer family to the former Roosevelt estate comprising the Roosevelt home and other grounds on Campobello Island;

(b) to take the necessary measures to restore the Roosevelt home as closely as possible to its condition when it was occupied by President Roosevelt;

(c) to administer as a memorial the "Roosevelt Campobello International Park" comprising the Roosevelt estate and such other lands as may be acquired.

ARTICLE 2

The Commission shall have juridical personality and all powers and capacity necessary or appropriate for the purpose of performing its functions under this agreement including, but not by way of limitation, the following powers and capacity:

(a) to acquire and dispose of personal and real property, excepting the power to dispose of the Roosevelt home and the tract of land on which it is located;

(b) to enter into contracts;

(c) to sue or be sued in either the United States or Canada;

(d) to appoint a staff, including an Executive Secretary who shall act as secretary at meetings of the Commission, and to fix the terms and conditions of their employment and remuneration;

(e) to delegate to the Executive Secretary or other officials such authority respecting the employment and direction of staff and other responsibilities of the Commission as it deems desirable and appropriate;

(*f*) to adopt such rules of procedure as it deems desirable to enable it to perform the functions set forth in this agreement;

(*g*) to charge admission fees for entrance to the Park should the Commission consider such fees desirable; however, such fees shall be set at a level which will make the facilities readily available to visitors;

(*h*) to grant concessions if deemed desirable;

(*i*) to accept donations, bequests or devises intended for furthering the functions of the Commission and to use such donations, bequests or devises as may be provided in the terms thereof.

ARTICLE 3

The Commission shall consist of six members, of whom three shall be appointed by the Government of Canada and three appointed by the Government of the United States. One of the Canadian members shall be nominated by the Government of New Brunswick and one of the United States members shall be nominated by the Government of Maine. Alternates may be appointed for each member of the Commission in the same manner as the members. The Commission shall elect a chairman and a vice-chairman from among its members, each of whom shall hold office for a term of two years, in such a manner that members of the same nationality shall never simultaneously serve as chairman and vice-chairman. The chairmanship shall alternate between members of Canadian nationality and United States nationality every two years. A quorum shall consist of at least four members of the Commission or their alternates, including always two from Canada and two from the United States. The affirmative vote of at least two Canadian and two United States members or their respective alternates shall be required for any decision to be taken by the Commission.

ARTICLE 4

The Commission may employ both Canadian and United States citizens. Their employment shall be subject to the relevant Canadian labor and other laws, and the Government of Canada agrees to take such measures as may be necessary to permit United States citizens to accept employment with the Commission on a similar basis to Canadian citizens.

ARTICLE 5

The Commission shall maintain insurance in reasonable amounts, including, but not limited to, liability and property insurance.

ARTICLE 6

The Commission shall hold at least one meeting every calendar year and shall submit an annual report to the Canadian and United States Governments on or before March 31 of each year, including a general statement of the operations for the previous year and an audited statement of the financial operations of the Commission. The Commission shall permit inspection of its records by the accounting agencies of both Governments.

ARTICLE 7

All property belonging to the Commission shall be exempt from attachment, execution, or other processes for satisfaction of claims, debts or judgments.

ARTICLE 8

The Commission shall not be subject to Federal, State, Provincial or local taxation in Canada or the United States on any real or personal property held by it or on any gift, bequest or devise to it of any personal or real property, or on its income, whether from Governmental appropriations, admission fees, concessions or donations. All personal property imported or introduced into Canada by the Commission for use in connection with the Park shall be free from customs duties. Further consideration shall be given to granting exemption from other taxes the imposition of which would be inconsistent with the functioning of the Commission.

ARTICLE 9

Arrangements may be made with the competent agencies of Canada and the United States for rendering, without reimbursement, such services as the Commission may request for the orderly development, maintenance and operation of the Park.

ARTICLE 10

The Commission shall take appropriate measures to emphasize the international nature of the Park.

ARTICLE 11

1. The Governments of Canada and the United States shall share equally the costs of developing the Roosevelt Campobello International Park and the annual cost of operating and maintaining the Park.

2. Any revenues derived from admission fees or concession operations of the Commission shall be transmitted in equal shares to the two Governments within 60 days of the end of the Commission's fiscal year. Other funds received by the Commission may be used to further the purposes of the Commission in accordance with the provisions of this agreement.

3. The Commission shall submit annually to the Canadian and United States Governments a budget covering total anticipated expenditures to be financed from all sources, and shall conduct its operations in accordance with the budget as approved by the two Governments.

4. The Commissioners shall receive no remuneration from the Commission; however, they may be paid reasonable per diem and travel expenses by the Commission.

ARTICLE 12

This agreement requires implementation by legislation in each country; it shall come into effect after the enactment of such legislation on a date to be fixed by an exchange of notes between the two Governments.

DONE in duplicate at Washington, this 22nd day of January 1964.

LESTER B. PEARSON
For the Government of Canada

LYNDON B. JOHNSON
For the Government of the United States of America

1/22/64
Washington, D.C.

II

The Secretary of State for External Affairs to the Ambassador of the United States of America to Canada.

DEPARTMENT OF EXTERNAL AFFAIRS

OTTAWA, August 14, 1964

No. 132

EXCELLENCY:

I have the honour to refer to the Agreement signed at Washington, D.C. on January 22, 1964, between the Government of Canada and the Government of the United States of America relating to the establishment of the Roosevelt Campobello International Park and in particular to paragraph 12 of that Agreement, which provides as follows:

> "This Agreement requires implementation by legislation in each country; it shall come into effect after the enactment of such legislation on a date to be fixed by an exchange of notes between the two governments."

The Parliament of Canada has adopted the legislation required to implement the Agreement in Canada, which legislation shall come into force on the 14th day of August, 1964. A copy of this legislation and of the proclamation of the Governor in Council relating to it are attached.(1) It is understood that the necessary legislation to implement the agreement in the United States of America has also been approved with effect as of the 7th day of July, 1964.

The requirements of Article 12 of the Agreement thus having been met, I have the honour to propose that our two Governments agree that the Agreement shall come into effect on the 14th day of August, 1964.

I have the further honour to propose that, if your Government agrees with the foregoing, this Note and your reply shall constitute an agreement between our Governments to that effect.

Accept, Excellency, the renewed assurances of my highest consideration.

PAUL MARTIN

His Excellency W. Walton Butterworth,
Ambassador of the United States of America,
100 Wellington Street,
Ottawa.

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(1)Bill S. 26 and the Proclamation not reproduced.

III

The Ambassador of the United States of America to Canada to the Secretary of State for External Affairs.

EMBASSY OF THE UNITED STATES OF AMERICA

OTTAWA, Ontario, August 14, 1964

No. 39

SIR:

I have the honor to refer to your Note dated August 14, 1964 together with the attachments thereto, relating to the Agreement between the Government of the United States of America and the Government of Canada signed at Washington, D.C. January 22, 1964, on the establishment of the Roosevelt Campobello International Park.

I have the honor to confirm that the necessary implementing legislation, a copy of which is attached,(2) was approved in the United States of America July 7, 1964, that the Government of the United States of America agrees with the proposal of the Government of Canada that the Agreement shall come into effect on the 14th day of August, 1964, and that your Note and the attachments thereto, together with this reply and its attachment, shall constitute an agreement between our two governments to that effect.

Accept, Sir, the renewed assurances of my highest consideration.

W. W. BUTTERWORTH

The Honorable
Paul Martin,
Secretary of State for External Affairs,
Ottawa.

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(2) Public Law 88-363, 88th Congress H. R. 9740 not reproduced.

APPENDIX 7

PUBLIC CONCERNS AND MANAGEMENT CHALLENGES

At the public meetings held in Fall 1981 the public was asked to identify its concerns about the type of management system which might be created in the estuary. Despite some difficulty in evaluating the volume and complexity of material in a short item, the answers had several common and repeated concerns. These concerns generally agree with the identification of management challenges present in the draft Management Program (November 1981).

The following table lists some of the major concerns identified, categorized according to the corresponding management challenge.

Public Concerns compared to Management Challenge

(1) Agree on Policy Goals and Objectives

- Concerns about translation of policies to actions.
- Concern that the process will result in status quo only.
- Concerns about how trade-offs are made and the need for a bargaining process and a 'fair fight'.
- Concern about how decisions are made concerning future demands on the Estuary.
- Concern about geographic scope of management program, especially need to address watershed planning needs, coastal planning needs, uplands and back-up lands.
- Concern about permanent protection of habitat and recreation lands.
- Concern about recognition of existing uses, upland owner rights, industry requirements, multiple use of the estuary.

(2) Simplify Government Administration in the Estuary

- Concern about too much government, too much complexity, cumbersome administration and jurisdiction.
- Concern with need for delegation and streamlining.
- Concern about moves to new system rather than evolving present system.
- Concern that the number of agencies will make the process cumbersome.
- Concern about mangement program adding to complexity rather than reducing and streamling.

(3) Manage money and Resources and People to Provide More Public Services in the Estuary.

- Concern that the Management System will need new funding or no system will work.
- Concern for need of permanent secretary to management process.

(4) Assure Accountability of all Agencies to the Management System

- Concern that the management system received direct political or senior level direction to coordinate, cooperate, and comply.

- Concern whether all agencies will change behaviour to subscribe to common agreements; concern that some agencies will opt out.
- Concerned that accountability will not be achieved under linked management system.
- Concern non-elected bureaucrats will be in charge (lack of trust in bureaucrats).
- Concern about effective opportunities for public input and influence in the management system.
- Concern about need to monitor and enforce performance of agencies.
- Concern that senior government committees would 'trample' local interests and that municipalities do not have effective input.
- Concern about breakdowns between management system and day-to-day managers in the field.

(5) Provide Useful and Accurate Information to Decision-Makers and the Public.

- Concern about openness and for not burying decisions deeply inside bureaucracy.

ANALYSIS OF MANAGEMENT CHALLENGES, POLICY AND PRACTICES REVIEW,

PROCESS DEVELOPMENT CONSULTANT

The Phase I Steering Committee proposed the establishment of a task group to undertake the following assignment:

> "An overall analysis of existing policy and practice as revealed by the reports of the Work Groups, covering the various levels and agencies of government, to complete the identification of gaps, overlaps, jurisdictional problems, etc..."

After the Policy and Practices Review Task Force was adjourned in August 1980, the task of policy and practices analysis was reassigned to a consultant. Due to delays in the establishment of a contract, and delays and illness of the consultant, the policies analysis report was not fully completed. However, much of the analysis was completed and the table below provides a summary of this analysis. The work was used to assist in identifying the important management challenges.

Below is a detailed analysis of the Management Challenges outlined in the Management Program text.

Analysis of Management Challenge

(1) Agree on Policy Goals and Objectives

- General

  - lack of common policy framework among many government agencies managing the estuary leads to inconsistencies in the policies of individual agencies.

  - complicated interagency communications leads to uncertainty and causes agencies to overstate policies in an attempt to seek a bargaining position.

  - some agencies are bound to departmental objectives that apply throughout B.C. and Canada which are not specifically related to the Fraser River Estuary.

- Water Quality Policies

  - comprehensive set of objectives for ambient water quality not established.

  - certain types of pollutants not included in existing standards.

  - some evidence indicates that water quality is declining for some parameters.

- monitoring the degree to which policy goals for ambient water quality are achieved is not assured.

- water quality impacts of drainage from upland areas not addressed.

- no direct charge for use of the Estuary to dispose of wastes.

- no incentives for development-oriented government agencies to support policies which would make users pay a larger share of maintaining water quality.

- interests of agencies which bear the cost of waste treatment and collection in conflict with agencies mandated to maintain water quality.

- Habitat Management Policies

  - a need for compatibility between conservation areas defined by Area Designation (awetted side of dykes) and areas behind the dykes designated for urban development or industry.

  - provincial policies have encouraged filling of floodplain areas.

  - conflicts exist between policies to encourage wildfowl production and the viability of agricultural crop production.

  - policies of agencies charged with maintenance of river channel depth and port development may create harmful impacts on habitat.

- Land Use and Transportation

  - consistent set of specific guidelines to define water dependent land uses has not been developed.

  - there is no ports strategy to rationalize west coast ports development.

  - there is no policy linkage between a west coast port stategy, the long term supply of land for port development and the timing of port and industrial development.

(2) Simplify Government Administration in the Estuary

- Water Quality

  - there are concerns that ambient and source discharge sampling is done by several agenices.

  - water quality research is not coordinated leading to unstandardized sampling techniques, information overlaps and gaps.

- enforcement of discharges under the Fisheries Act is duplicated.

- many agencies are involved in the regulation of dredgeate disposal.

- Habitat

  - numerous agencies collect information independently.

(3) Manage Money, Resources and People to Provide More Public Services in the Estuary.

- Water Quality

  - need for more resources to implement priority water quality protection measures such as increased secondary treatment, hazardous waste handling, toxic waste disposal and separated storm water system discharges.

- Habitat

  - need more resources for a habitat management program.

  - need for "banking" of habitat.

  - need to assess implications of public access on the costs of dyke maintenance.

- Recreation

  - need for program to aquire key recreation sites on the estuary.

(4) Provide Useful and Accurate Information

- Water Quality

  - need for integrated water quality information system.

  - need for hot line on illegal discharges.

  - information as to economic impact of various levels of water quality treatment and enforcement.

  - need for information on the effect of boating and unregulated ship discharges.

  - more resources for water quality monitoring of management.

  - simplify referrals for water quality approval procedures.

- **Habitat**

  - need to include upland impacts on Fraser River Estuary in environmental impact statement process.

  - need better understanding of habitat dynamics.

  - need for hot line on bank modification/grounding.

  - simplify referrals.

- **Land Use and Transportation**

  - need for comprehensive land use development and management information system (e.g. Land use information system).

  - need for overall information regarding port demand of future requirements.

  - need better information on future demand water related industry, forest products industry.

(5) Assure Accountability

- **Water Quality**

  - need to bring all industrial and municipal discharges under permit.

  - difficulty preventing one-shot accidental or illegal discharges.

  - pesticides still being evaluated.

  - need specific jurisdiction for water quality regulation of upland projects impacting estuary.

  - limitations of FRES area i.e. water quality problems upstream.

  - need to further simplify spill management.

- **Habitat**

  - enforcement of illegal bank modification and dumping (e.g. hog fuel).

  - regulate recreational access to sensitive habitat.

  - habitat lands being administered by agencies without a conservation mandate.

  - jurisdictions not equal to habitat dynamics.

- Land Use and Transportation
  - development guidelines for sites near estuary.
  - one-stop shopping for developments.
  - municipal regulation vs senior government programs.
  - need administrative process for resolution.
  - jurisdictional split between Harbour Commissions and municipalities for many Fraser River Estuary Study users.
  - coordination amongst Harbour Commissions and National Harbours Board.
  - Indian reserve development.
  - Harbour Commissions jurisdiction over some activities/areas with primary environmental concerns e.g. habitat outside dyke and shipping discharge.
- Recreation
  - consistent site recreational guidelines
  - jurisdiction of access problems.
  - dyke access and jurisdictional complexities.

CHAPTER IV - A LINKED MANAGEMENT SYSTEM PROPOSAL:

THE COMMITTEE SYSTEM AND LEAD AGENCIES COMPONENT

Legally and organizationally there are many ways to organize a management system that combines the committee and lead agency approaches. Details would be decided through intergovernmental discussion and agreement. The following illustrates one general way.

A. PREPARING THE GROUND

Before any new management system is introduced, there are a number of steps which could be taken to prepare the ground. These steps would improve the effectiveness of management quickly and could also smooth the way for an easier implementation of new management structures.

1. Streamlining Interagency Processes

The first step in improving management of the estuary would begin with a streamlining of existing interagency management processes. This work should begin before any reorganization of the present management system is started. Day-to-day management of the estuary would continue to be entrusted to the existing estuary agencies. Except where lead agency agreements rearrange responsibilities, existing agencies would to a large extent retain their present authority and responsibilities. However, interagency relations have evolved over time as a variety of issues have been addressed. There is considerable overlap, duplication and inefficiency in the present system.

2. Rationalization of Agency Jurisdictions

Another initiative to preparing the ground for introduction of a management system would be to untangle some of the complexity in existing jurisdictions. Some rationalization and streamlining of jurisdictions would serve to simplify management. By giving some agencies broader mandates for a wider range of issues in the estuary, the number of agencies involved in managing the estuary could be reduced. This could occur through lead agency delegation, protocol agreements or interlocking management. These approaches are described in technical reports of the study. Governments must decide how much reorganization is desirable "in their own houses".

3. Coordination of Referrals System

A major improvement to the existing management system could be achieved by the implementation of a coordinated referrals and assessment process. Proposals for such a process are described in Reith, G., Information Systems Report (F.R.E.S., 1982) and in summary form in Chapter V of this report. Such a system would link the twenty or so approval, referral and assessment processes into a coordinated system. Since referrals processes are one of the major processes for managing the estuary, this improvement alone would bring major benefits in terms of increased efficiency.

4. Improved Information Flows

Another initiative would be the introduction of an estuary information system. This proposal is also described in the Information Systems Report and Chapter V of this report. At present there are many agencies who collect information about estuary processes. There is some duplication of effort as different agencies collect the same types of information not knowing that such data has already been collected by another agency. In other cases agencies make decisions with little data, though other agencies have substantial information in their files. Since information is a raw material of decision-making, information sharing would greatly improve the quality of management decisions. It would also speed management decisions since it would eliminate unnecessary research and data gathering.

5. Implementation of the Management Program

The management program would itself be another major step toward improving the management of the estuary. A draft management program has been published as a separate report. Many agencies who have been working on the development of this management program have found that the information sharing, interagency discussions, and development of joint understanding with other agencies have improved their capability to manage in the estuary. This process of joint work should be continued with the preparation of activity programs and other joint projects. The management program document, as it evolves, should become a focus for cooperation between agencies. This focus on common goals will achieve some of the benefits of improved management with or without a management system.

B. AN ORGANIZATIONAL CONCEPT

Organizational researchers have studied the performance of various organizational structures in different situations. It has been found that certain organizational structures work well in certain circumstances but not in others. For example, a bureaucratic organization works well in a military or assembly line situation. It does not necessarily work well in a situation where creative problem solving and multiple decision makers are involved.

In a situation such as the Fraser River Estuary, where there are many decision makers who have to make cooperative decisions on the basis of weak information and considerable uncertainty about events in the future, a non-heirarchical situation is considered best. The best approach is to use 'lateral mechanisms' such as task forces, joint programs, flexible agreements, information systems and coordinated procedures. Crucial to the functioning of this type of management system is the establishment of a place for discussion and agreement on joint actions. Once actions are decided upon, it is then important to decide who will do the work. The system which will be described below establishes committees as a place to decide on what will be done. These committees will provide an opportunity for everyone to discuss and agree on policies. Once decisions are made and agreements concluded, there would be clear assignment of implementation responsibilities either to task forces of lead agencies. The committee system would be strengthened by various special processes which would improve information and communications.

The organizational proposals recommended in this report comprise seven main elements:

A Committee System

- a policy committee
- a key agency committee
- a program committee

Lead Agencies

Special Processes

- a participation process
- a coordinated referrals and assessment process
- a Fraser Estuary Information System

The committee system and lead agencies are discussed in this chapter and special processes in Chapter VI. Each chapter describes a component of the proposed management system.

1. A Committee System

A three committee system is suggested for planning and representation in estuary management; a *policy committee* of senior officials, a *key agency group* comprising major estuary management agencies, and a *program committee* consisting of estuary level managers and user interests.
(see Appendix IV-1)

Three main estuary committees would be organized to represent various interests and participate in ongoing planning activities. They would not replace existing agencies but would concentrate on tasks requiring cooperation between agencies.

a. A Policy Committee

The primary authority for public policy and decision-making in the Canadian political system is by the elected officials of parliament and the legislature. An explicit means for maintaining contact between elected governments and the management system should be built into the system at the outset. A committee, formed at the most senior levels at government service, would be able to maintain contact with the political process, provide overall direction to the management process, negotiate or arbitrate conflicts unresolved at the management level, set priorities, ratify major planning decisions, convey directions from the political level to the program committee. It would also be able to carry recommendations as necessary to governments where major political decisions are required. It would also have other senior level overview responsibilities and ensure responsiveness to public input. Such a committee would be important in assuring accountability.

This committee would be small in size. Its major role would be to represent federal and provincial governments in the estuary management system. The committee would agree on questions of budget for the management system, committee membership and terms of reference for major initiatives. In a sense it would be an executive committee of the system and a point of contact between the management system and the governments of Canada and British Columbia.

The terms of reference, membership and operation of the committee would be guided by agreements negotiated between the governments of Canada and British Columbia.

b. A Key Agency Group

A key agency group would be a management or operations committee formed at the estuary management level of government agencies. Its role would be to coordinate management activities in the estuary to implement the Estuary Management Program. The group would assume responsibility to implement common goals and policies agreed upon by estuary committees. Key agencies would take on the role of putting common policies into practice. The key agency group would assist with plan preparation, organize task forces to undertake joint projects and programs, and nominate and support lead agencies for implementation of estuary management functions.

The key agency group would also be involved through the Program Committee with planning. Planning, in part, involves deciding who can best carry out common policies, programs and projects. Some of these actions might best be implemented by joint task forces with specific tasks to perform. In other cases it would involve agreeing with lead agencies who would assume the responsibility for implementation. Coordination of implementation would best be accomplished by agreement among the agencies with the statutory powers to manage the estuary. A key agency committee would therefore be an appropriate body to coordinate work.

The key agency group would be small in size and would include only those agencies which have key management responsibilities in the estuary. Key agencies are agencies with significant statutory authority for managing estuary resources and the many day-to-day activities of the various users which affect these resources. Key agencies would normally be government agencies with the authority to either grant or assent to the issuance of a permit or approval. For example, Harbour Commissions grant leases for use of water lots on the river foreshore while the Federal Department of Fisheries and Oceans may allow or prevent developments or activities on the estuary. Local governments, agricultural agencies and Indian Bands are also important as upland counterparts involved in estuary decisions. Each of these agencies also could be a lead agency in a given situation as described below.

Key agencies would be reinforced as the managers of the estuary. Authority of these agencies would not be reduced, but rather strengthened, broadened and coordinated in the proposed management systems. These agencies become the focus for leadership and momentum in achieving coordinated management of the estuary. They would have the coordinating role in implementing the management program.

c. A Program Committee

The Program Committee would be a planning committee with primary purposes of organizing planning activity and providing for representation of agencies and user interests. To accomplish these purposes it would include both operational staff of government agencies as well as affected user interests.

The Program Committee would have planning, representation and other functions.

(1) Planning

Planning is a continuous process of adapting to the future. Cooperative management of the estuary involves ongoing review and formulation of goals, objectives, policies, and priorities. It also involves translation of planning activity into separate action agreements that say something about what government activities should occur and with what level of effort.

Planning also involves a determination of costs and agreement on expenditures to implement action recommendations. This may involve the development of public project proposals and presenting these proposals to governments for decision. It may also involve the study of program changes which involve minor or major government decisions. The activity programs described in the Management Program Report identify studies which could lead to such proposals. Planning also involves deciding who can best carry out policies, programs and projects, whether it be task forces or lead agencies. This function is coordinated by the Key Agency Group.

Planning also involves the monitoring of trends and events occuring in the estuary to determine if goals and programs are being met. Over time, some goals and programs will accomplish their purpose and become obsolete. These estuary committees would review and amend goals and programs as necessary. To ensure that obsolete regulations do not accumulate on the books, a regular process of review should be agreed upon. This review should include sound criteria for determining the continued relevance and efficiency of all aspects of existing management.

(2) Representation

Because estuary decisions effect thousands of people directly or indirectly an important role of estuary committees is to represent people. However, because of numbers, not everyone can sit on an estuary committee. A respresentative approach is needed to enable discussion of issues. In practical terms this means the creation of 'seats' on the program committee and its sub-committees to include representatives of both key agencies and affected user interests. Key agencies would include representatives of the key agency group described above. User interests would include the forest industry, recreation and environmental groups, fishermen, labour and others. Finally, as necessary, the program committee would involve agencies or services able to provide technical assistance or information needed to facilitate planning and decision-making.

(3) Other Functions

Committees are also effective for other management activities in the estuary. Committees are effective instruments for coordination of activities involving joint participation by several organizations. For example, some estuary projects or programs might best be implemented by a task force. Task forces or sub-committees could be organized by the Key Agency Group or Program Committee depending on the circumstances. Task forces would be given certain tasks to perform on behalf of other agencies. Operation of a coordinated referrals and assessment process is one example of a task which could best be managed by a committee working closely with a lead agency or agencies. Fraser River Estuary Information System, proposed later in this report, would also best be managed by a committee. Coordination of research and monitoring activities would also be effectively achieved by a committee approach. In many cases the studies undertaken to develop activity programs also described later in this report would best be performed by committees.

d. Committee Organization

We have described a committee system above consisting of a policy committee, key agency group and a program committee. Each committee needs an appropriate structure for membership, participation, voting processes, responsibilities.

The policy committee would make decisions by consensus since both Canada and British Columbia would need to concur to achieve agreements. The committee members would be appointed by the respective governments. The terms of reference of the committee would be spelled out by Federal-Provincial agreement.

The key agency group would be appointed on the basis of their key management role in estuary approval decisions. Voting procedures and group responsibilities would be decided by Federal-Provincial agreement.

The program committee would have *advisory* responsibilities and its role would be defined by policy committee directives. Its membership would be representative of the key agencies and key user interests in the estuary. While there are several ways in which a program committee could be organized, terms of reference should be carefully specified. These should define the relationship between the program committee and the activities of the key agencies group so that the relationship is clear between committee recommendations and lead agency follow-up.

It is also important in the relationship with key agencies to ensure that plans and input from other interests are considered in key agency actions. In return, the key agencies will be able to advise the program committee as to what is feasible given existing jurisdictions, responsibilities, and resources.

To maintain flexibility an adaptable enabling agreement could be designed to guide the program committee, amendable from time to time by the policy committee through supplemental agreements. These agreements could progressively assign functions and responsibilities to the program committee as it gained more experience and effectiveness. This would allow the management program to be implemented in a progressive, incremental process, as recommended later.

The choice of committee procedures is left for detailed discussions between the governments of Canada and British Columbia as they negotiate future estuary management arrangements. Suggested options are provided in the Appendices to this chapter.

2. Lead Agencies

Lead agencies are another component of the combined committee/lead agency approach. Lead agencies are government agencies chosen for the role of taking the lead for certain aspects of estuary management.

Role. Lead agencies would normally be agencies with substantial management responsibilities already in the existing management system for the estuary. These agencies would take on an additional role to implement agreed policies and programs of the management system, in addition to their usual responsibilities given to them by government.

Specific tasks of lead agencies would vary. To assist estuary committees, lead agencies might undertake planning or other studies on behalf of committees. Lead agencies might be called upon to implement various components of activity programs, area designations, or area plans. As participants in the estuary management program, lead agencies would review internal policies, guidelines and operating procedures to achieve consistency between the management program and agency policies. Lead agencies might also be asked to assign staff, facilities, equipment and other resources to joint projects. They might also assume responsibility for implementation of an interagency process, such as coordinated referrals and assessment procedures.

An existing example of a lead agency agreement is the management contract between the B.C. Ministry of Lands, Parks and Housing and the federal harbour commissions. The river bed in some areas is Provincially owned. However, the federal harbour commissions have substantial authority to determine end uses of these river areas, based on federal primacy of authority with respect to navigation. In order to avoid duplication, the harbour commissions and the Ministry have concluded agreements to assign responsibility for lease management to the harbour commissions. Similar lead agency agreements could be established for coordination of environmental enforcement, monitoring, recreation development, habitat management and other areas.

Lead Agency options. Lead agencies would be chosen by the Key Agency Group on the basis of current management responsibilities and jurisdiction and on the basis of resource management expertise and capability. Lead agencies may or may not be members of the Key Agency Group. Lead agencies may be chosen on the basis of geographic area (North Fraser, Boundary Bay, etc.), the resources to be managed (water quality, recreation, land use, habitat, transportation, other), or the type of management function (research, facilities development, habitat management, planning, etc.).

Because leadership in estuary management is focussed on the lead agency, the lead agency should be a government agency with substantial management responsibilities in the present system. It would normally have the authority to either grant, or assent to issuance of, a permit or approval. In order to streamline management of the estuary, an objective should be to focus or concentrate management roles in a few agencies. Therefore, candidates for lead agency status should first be sought from among the agencies with major roles in the present management processes. For example, harbour commissions are involved in most development activities in the river foreshore. They would be obvious candidates. Other major agencies would be the federal Department of Public Works, the federal Department of Fisheries and Oceans, the B.C. Ministry of Environment and others.

Delegation. Lead agencies would be chosen by the Key Agency Group and widened responsibilities would be delegated to them by mutual agreement. The estuary committees would essentially try to achieve a consensus on a management program or certain management tasks. Once these committee agreements are achieved, a decision as to the appropriate entity to do the work is made. This assignment would normally go to either a lead agency or task force. Lead agencies are preferred as a means of simplifying administration and establishing clear responsibility and authority to act.

Once a lead agency is chosen, other agencies would support them in fulfilling their responsibilities. Where lead agencies implement joint decisions, there is a need to agree on the work to be done. There is also a need to specify the relationships between lead agencies and other agencies and interests. There may be a need to review and reinforce the lead agency in its role, including allocation of increased money, manpower, or other resources.

Where conflicts arise, the Key Agency Group may serve the role of mediating and coordinating the processes between lead agencies and other agencies and interests. It is important that committees have an ongoing relationship with lead agencies to be sure that plans and input from other interests are considered in lead agency actions. On the other hand, the committees will depend on the information and advice of lead agencies, who can advise them on what is feasible given the existing jurisdictions, responsibilities, resources and practical constraints on government actions.

Lead agency assignments can be effected by various means. In some cases the primacy of a specific lead agency to act in certain circumstances could be specified in key agency minutes or other documents. Lead agencies might also become lead agencies through the negotiation of more formal 'protocol agreements'. These agreements are simply written interagency procedural guidelines which give details on the roles of different agencies in a certain area of management. There are numerous examples in government administration.

Lead agencies would use their existing authority to make and implement these protocol agreements. These agreements would specify the responsibilities, accountability and authority delegated to the lead agency. They would describe what would be done and what procedures would be used.

Protocol agreements should also specify consultative procedures between lead agencies and other agencies. Agencies agreeing to "second agency" status would allow first action by the lead agency. However they would not necessarily give up their existing prerogatives and could step back in if need be. For example, second agencies would want to be involved in major new policies or decisions. Second agencies would want to evaluate whether their responsibilities are affected by changes in direction. Where lead agency actions caused concerns to other agencies, the estuary committees become a forum for discussion and review.

Protocol agreements are an important tool for streamlining government administration and rationalizing agency jurisdictions. Protocol agreements can be established between pairs or groups of agencies which presently share responsibilities for some aspect of managing the estuary. Areas of overlap and duplication can be assigned to one agency. This one agency could be delegated to act as lead agency on behalf of the others. This practice would progressively streamline the estuary management system and add to the efficiency of government management.

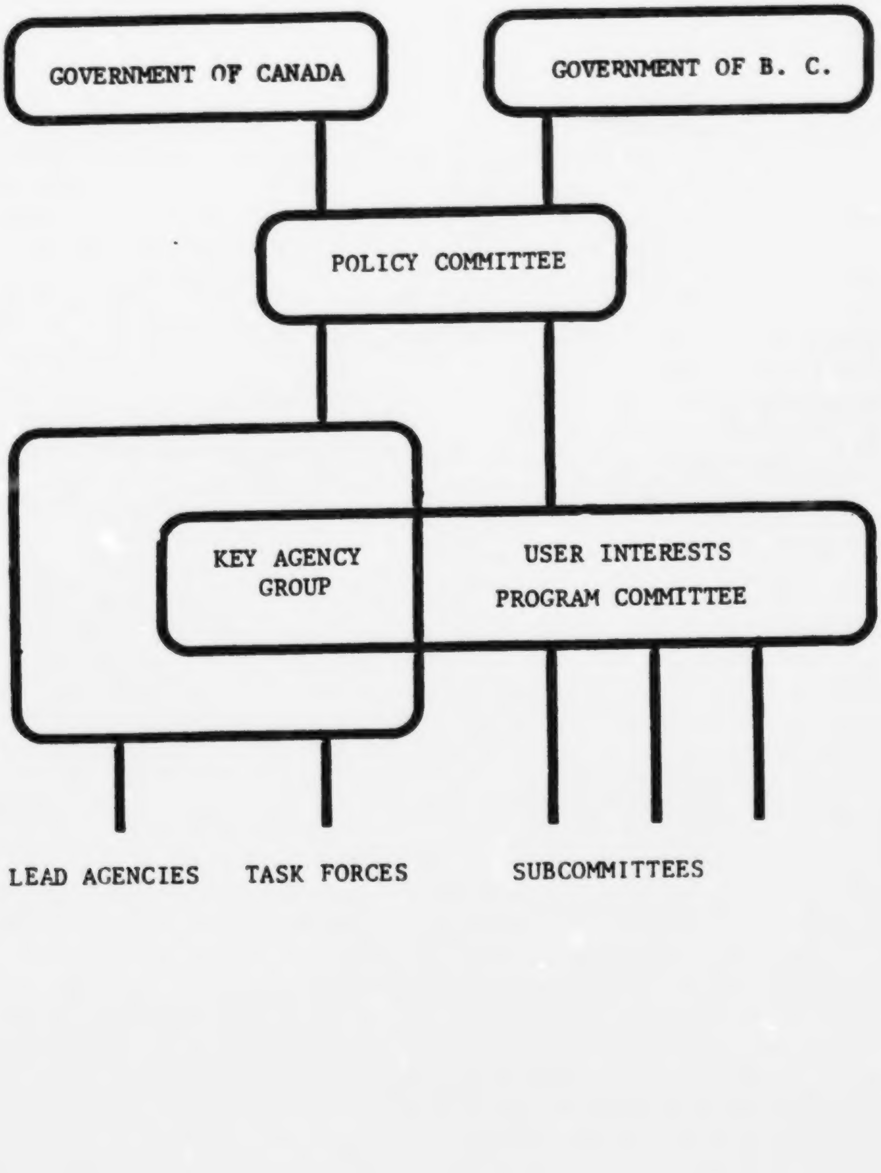
Lead agencies are a powerful tool for estuary management. Lead agencies can streamline the power to act and help to ensure effective, efficient and prompt action. Lead agencies should be a primary focus for estuary management.

* * *

In Chapter V, three special processes are reviewed which are one in substance with proposals presented in this Chapter.

APPENDIX IV-1

ESTUARY MANAGEMENT SYSTEM


GOVERNMENT OF CANADA
GOVERNMENT OF B. C.
POLICY COMMITTEE
KEY AGENCY GROUP
USER INTERESTS PROGRAM COMMITTEE
LEAD AGENCIES
TASK FORCES
SUBCOMMITTEES

APPENDIX IV-2 COMMITTEE ORGANIZATION

This appendix is a review of the options for committee organizational design. As part of the discussion of management systems options, the Management Systems Sub-Committee and Planning Committee discussed various configurations of committee organizational design. This appendix was prepared as a background supplement to these discussions. Extensive background on committee organization is given in the Fraser River Estuary Study technical report on Organizational Options for Linked Management.

The role of deciding the specific design and arrangements of a committee system is the responsibility of the Governments of Canada and British Columbia in the review of the Phase II recommendations.

This report recommends a management system consisting of three committees:

(1) A policy committee

(2) A key agency group

(3) A program committee

It also recommends(4) the use of lead agencies where possible for implementation.

The above recommendations are supplemented by processes described later including:

(5) A participation process

(6) A coordinated referrals and impact assessment process, and

(7) A Fraser Estuary Information System

All of the above 'structures' collectively comprise a management system. These mechanisms would all be classified as lateral or peer-to-peer mechanisms. Lateral mechanisms are clearly preferred in situations involving high uncertainty, frequent change, poor information, and multiple decision-makers. Heirarchical systems simply cannot function effectively in these 'turbulent' management environments (Wolfe, 1981).

This section focusses on the estuary committee system. However, one should bear in mind that the committees are only part of the system. To understand how these components interact, several cases are appended to this report (See Appendix B).

This section looks at the following pieces of a committee system:

- Committee Membership
- Committee Participants
- Committee Voting Processes

- Committee Authority
- Committee Responsibilities

From these building blocks a suggested committee structure is proposed.

A. COMMITTEE MEMBERSHIP

Committee membership has a central role in affecting committee decisions. Committee members can influence committee decisions by discussion and voting. There are three options for each committee in terms of membership.

(1) Representational

A committee can be formed to represent the major interests affected by the decisions of the committee. In this case, affected interests would have a voting voice on committees.

(2) Decisional

A committee can comprise only the decision-makers with the legal authority to carry out decisions. In this case, affected interests would not sit on the committee.

(3) Mixed

A committee can mix representational and decisional roles in the same committee.

Each of these options must be reviewed in terms of:

(a) Organizational Constraints (eg. numbers and committee process should be manageable);

(b) Legal Constraints (eg. committees must not make ultra vires decisions; actions must be premised on and remain within committee terms of reference).

A more subtle membership question concerns the role of the member. Does the member represent a specific agency or interest, or some wider community of interests (eg. the estuary, the public, the government etc.)? The question is whether committee members should rise above agency interests in the name of a holistic view of the estuary. Committee member roles can include any combination of the following:

(a) to monitor, review and comment on committee business from the agency or user interest perspective in order primarily to protect agency or user interests (agency then committee);

(b) to participate in a joint program, submerging separate agency identities to the overall committee purpose (committee then agency);

(c) to observe and note committee business (information only);

(d) to provide general advice and technical assistance to the committee (support);

(e) to fulfill orders to attend from superiors within the agency (compulsion).

Experience with interagency committees (eg. Regional District T.P.C.s) suggest that the member's role is defined by each member's agency. The same committee often has a range of members, each with a different perspective on his/her role. The same is perhaps true of the Estuary Study, Phase II. This is not beneficial to achieving agency agreements since expectations and commitment differ. Implementation plans should clarify the membership roles of all committee members and orient members thoroughly to the expectations concerning their roels.

B. COMMITTEE PARTICIPANTS

In order to specify the type of member comprising each committee, it is useful to agree on the terminology used to define various classes of member. The following definitions are proposed. There is obviously some overlap among certain categories.

(1) Political Officials

The governments of Canada and British Columbia as represented by elected Ministers designated as responsible for the estuary management program.

(2) Senior Government Officials

The most senior levels of government service, including deputy ministers, regional director generals, assistant deputy ministers.

(3) Key Agencies

Key agencies are government agencies with significant approval or regulatory functions within the estuary. Candidates for key agency status include any agency which has statutory authority either (a) to grant or issue a significant permit or approval, or (b) to assent to the granting or issuance of a significant permit or approval.

(4) Lead Agencies

Lead agencies are government agencies who have been delegated by mutual agreement to assume specified responsibilities to implement decisions of the management system. Formal delegation of lead agency status would be by way of interagency protocol agreement or Key Agency Group appointment accepted by a lead agency. A lead agency may or may not be a key agency.

(5) Second Agencies

In many cases, lead agencies would receive responsibilities transferred to them from other agencies. An existing example is the transfer of lease management over provincial river bed to the federal harbour commissions from the B. C. Ministry of Lands, Parks and Housing. In these cases the second agency would agree to allow first right-of-action by the lead agency. However, second agencies might retain secondary statutory prerogatives to step in if need be. Further, second agencies may decide to retain a role in any major decisions of changes in policy.

(6) Support Offices

Support offices are government agencies or branches of government agencies which provide technical assistance, liaison, information or other management support to the management system.

(7) Local Governments and Indian Bands

Municipalities, regional districts and Indian Bands adjacent to the estuary represent a special class of government agencies.

(8) User Interests

User interests are loosely defined to include any organized association, government agency or interest group with a significant interest in the management of the estuary. User interests might include the forest industry, fishermen, labour, agriculture, recreation groups, environmental groups, community groups, academia and similar groups.

C. COMMITTEE VOTING PROCESSES

(1) Voting Procedures

The voting process of a committee may largely determine the decisions a committee will make. There are several common voting procedures which may be considered:

(i) Consensus

A consensus is a general agreement, i.e., each member is either in agreement or not in strong disagreement with a committee decision. Unanimity is an extreme variation of consensus.

(ii) Fixed Percent Vote

Voting arrangements can include simple majority votes, two-thirds votes, three-fourths votes, or similar variations.

(iii) Two Part Votes

In complex organizations, committee decisions may be made by two countings of votes, or votes of two different committees. For example, in the Canadian Parliament (House of Commons, Senate) and U.S. Congress (House of Representatives, Senate) two separate 'committees' vote. Amendment of a federal constitution usually may require, for example, a vote of 7 provinces representing 50 percent of the population and a vote of the federal legislative body or parliament.

(iv) Designated Voting

Designated voting is a seemingly complex but quite manageable voting process as used by regional district boards. At a single gathering, four separate boards may hold sequential meetings with separate memberships (Regional Board, Regional Hospital Board, Regional Water District Board, Regional Sewer and Drainage District Board). As the meeting progresses, the chairmanship changes and the eligible membership changes. This allows the Greater Vancouver Water District, for example, to include a non-GVRD municipality (eg. Langley)to "join" the organization for selected votes, yet be silent on other issues (regional planning).

A variation on the designated voting procedure is a rotating voting procedure. In this situation, some positions or 'seats' might rotate among a pool of representatives. For example, a municipal 'seat' might be occupied by the Surrey representative when Surrey issues are discussed and other representatives when the area of focus shifts to new municipalities. This procedure is complex and would require careful ground rules especially when issues are addressed which affect multiple areas.

(2) Other Considerations

In addition to voting procedures there are other options which may relate to a voting system.

Weighting

A major issue common to any voting process designs, and never really resolved to everyone's satisfaction, is the weights assigned to votes of each member. In some voting systems, some committee members are given more votes than other members due to larger size (eg. population). In the U.S. Senate, for example, Nevada, (the smallest state in population) has two votes, same as California. In the House of Representatives, on the other hand, the States have voting proportional to population. In the GVRD voting is proportional to population, however, some delegates have more votes (up to 5). In interagency voting committee membership could weight the voting and affect decisions. For example, if there were 10 agencies managing polliwogs and 5 managing balcksmiths, polliwogs may be expected to receive high priority in the voting. The existnece of 10 polliwogs and 5 blacksmith agencies may bear no relevance to the priority of the resource, the necessary number of agencies, or any other factor relevant to the decision.

Ex Officio Status

Not all persons present at a meeting need have voting eligibility. The opportunity to observe, advise, comment and influence decisions can be applied to different committees in the system. The best choice depends on what decisions the management system has to make and what preferences and constraints face the management system designer.

Vetoes

A check and balance option in certain complex voting systems is the option of a committee decision or vote being passed, subject to a veto by a member (U.N. Security Council) or separate entity (U.S. President). Vetoes tend to be highly devisive and rarely used as a result. However, the threat of veto often encourages compromise.

A process of referral for review by higher authority can serve as a form of veto. In this case, implementation of committee decisions would be delayed pending appeal to a higher authority.

D. COMMITTEE AUTHORITY

A committee can have a range of authority to make or recommend decisions. The 'mandate' of a committee is an important component of the definition of a committee. For our purposes, we have defined three options in terms of committee authority.

(A) Advisory

A committee has no power to make and carry out decisions, but may make recommendations to appropriate decision-makers.

(B) Contractual

A committee is authorized to discuss, negotiate and agree on common policy directions and actions, subject to ratification if necessary, by executives of member agencies.

(C) Decision-Making

A committee has a mandate to make decisions binding on member agencies in certain defined interagency matters.

The boundaries are obviously grey in any committee between these options. An advisory committee would have decision making responsibilities in certain minor areas. A decision-making committee would be advisory in some situations or issues.

E. SUMMARY OF CATEGORIES

The following categories of structural design elements are summarized from earlier analysis:

Membership Options

(a)Representational
(b)Decisional
(c)Mixed

Participants

(1)Political Officials
(2)Senior Government Officials
(3)Key Agencies
(4)Lead Agencies
(5)Second Agencies
(6)Support Offices
(7)Local Government and Indian Bands
(8)User Interests

Voting Procedures

(i) Consensus
(ii) Fixed Percent Vote
(iii)Two part Vote
(iv) Designated Voting

Authority

(A) Advisory
(B) Contractural
(C) Decision-Making

The table below is one possible arrangement or mix of arrangements which could be used to define the committee organizations proposed in this report.

COMMITTEES	Membership	Participants	Voting Options	Authority
Ministers	b	1	i	C
Policy Committee	b	2	i	B/C
Key Agency Group	b	3,7	i/ii/iv	B/C
Lead Agencies	b	3,4	N.A.	B/C
Program Committees	c	3-8	i/ii/iii/iv	A
Sub Committees	c	3-8	i/ii	A

"/" means "or"
"," means "and"

Possible committee responsibilities are listed in section "F" following.

F. COMMITTEE RESPONSIBILITIES

The terms of reference or mandate of a committee defines the bounds of what it can consider and what actions it may take. Unless specifically authorized by government, committees would have no authority to override the decisions of line agencies. This is consistent with the principle of the supremacy of parliament and written law. Therefore, the responsibilities defined for committees determine what committees become. The following responsibilities could be defined for estuary committees.

1. Policy Committee

- Establish other estuary committees, and via supplementary agreements, assign duties incrementally as system evolves;

- Agree on management system budget, membership, and terms of reference for major planning studies or implementation projects;

- Serve as a contact point for ratification of the management programs as necessary;

- Link the management system to the political process;

- Convey directions from the political level to estuary committees;

- Carry recommendations from the estuary committees to the political level where major political decisions are required;

- Approve major compromises and trade-offs as necessary;

- Assure accountability;

- Negotiate or arbitrate conflicts not resolved at the operational level;

- Assure responsiveness to public input;

- Hear representations from affected agencies or interest.

2. Key Agency Group and Lead Agencies

- Participation as part of the program committee;

- Undertake planning or other studies on behalf of other committees as necessary;

- Determination of costs and required initiatives to implement action plans (as part of planning process);

- Translation of overall planning activity into specific action plans;

- Agree to assume responsibility for implementation;

- Nomination of lead agencies to undertake implementation tasks;

- Agree to procedures for consultation and review of implementation;

- If possible, discussion and resolution of interagency disputes referred by lead agencies or agencies affected by lead agency actions;

- Assign staff, facilities, equipment and other resources to joint projects or programs;

- Review and amend agency policies, guidelines and operating procedures to compare with Management Program and through give and take achieve plan consistency;

- Coordinate approvals, referrals and assessment processes through agreed system.

3. Program Committee

- Represent significant user and agency interests affected by estuary decision-making;

- Research and preparation of background studies and technical reports;

- Via Sub-committees, review research reports for their implications for estuary management;

- Ongoing review and formulation of goals, policies, priorities and objectives of the Management Program;

- Preparation of plans and plan amendments including the Management Program, Activity Programs etc.;

- Proposing area designations, land and resource guidelines, other policies;

- Via sub-committees, review and suggest improvements to the Fraser Estuary Information System.